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offices. This would make obtaining the stamps considerably less of a difficulty for many people in my State.

The saddest thing about all this is that this situation exists all over the Nation. The Select Committee on Nutrition and Human Needs has revealed in its investigations of the problem of hunger that it is a national problem. The conditions of which I spoke exists in all 50 States, not just in Texas. And the food stamp program as it is now structured has the same shortcomings and the same weaknesses in the other 49 States that it has in Texas. Too few counties across the Nation have food stamp distribution programs. Too few people are being fed. The stamps are not being provided at prices which many people who need them can afford. The process for obtaining them is so difficult that many people who need them are not getting them. And this is happening all over the country, not just in Texas. I feel that this bill should be enacted to remedy this problem all over the country, not just in Texas.

As I told my constituents in February of this year, "It is within our power to banish hunger and malnutrition from our land; we have a responsibility to exercise that power. Our unparalleled agricultural abundance must be shared with all our people here at home—no American should be malnourished."

I think that the food stamp program could be a useful means to this end. Unfortunately, this program is not now operating as it should. I think that the reforms provided for in this bill are necessary if this program is to achieve its full potential for effectiveness. I give it my unqualified support.

Mr. President, I ask unanimous consent that tables showing the March, 1969, participation in the food stamp program in Texas and the March 1969 participation in all food distribution programs in my State be added at this point in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

[Number of persons]		
State/Adm. unit	Commodity distribution	Food stamp
TEXAS		
Anderson.....	802	
Angelina.....	621	
Atascosa.....	1,878	

[Number of persons]		
State/Adm. unit	Commodity distribution	Food stamp
TEXAS—Continued		
Austin.....	642	
Bastrop.....	1,687	
Bee.....	335	
Bexar.....		22,616
Brewster.....		229
Brooks.....	2,400	
Brown.....	1,252	
Burleson.....	1,972	
Caldwell.....	1,451	
Callahan.....	338	
Cameron.....	9,172	
Camp.....	916	
Carson.....	52	
Cass.....	2,221	
Cherokee.....	1,917	
Childress.....	265	
Cochran.....	246	
Coke.....	96	
Comanche.....	848	
Cooke.....	847	
Cottle.....	571	
Crosby.....	224	
Culberson.....		140
Dallam.....	113	
Dallas.....	19,090	
Dawson.....	811	
Delta.....	649	
De Witt.....	1,803	
Dickens.....	489	
Dimmit.....	1,471	
Duval.....	3,299	
Eastland.....	1,106	
El Paso.....		8,335
Falls.....	2,343	
Fannin.....	3,009	
Fayette.....	1,313	
Fisher.....	361	
Floyd.....	424	
Foard.....	192	
Franklin.....	451	
Freestone.....	1,536	
Frio.....	1,681	
Galveston.....	3,253	
Goliad.....	1,028	
Gonzales.....	1,968	
Grimes.....	2,020	
Crayson.....		
Denison (city).....	286	
Guadalupe.....	940	
Hale.....	1,461	
Hamilton.....	273	
Hardeman.....	483	
Hardin.....	1,592	
Harris.....	25,038	
Haskell.....	830	
Hays.....	1,397	
Hemphill.....	69	
Henderson.....	963	
Hidalgo.....	11,217	
Hill.....	1,895	
Hockley.....	689	
Houston.....	2,367	
Howard.....	707	
Hudspeth.....		160
Hutchison.....	825	
Irion.....	92	
Jackson.....	386	
Jasper.....	1,927	
Jeff Davis.....		106
Jefferson.....	4,046	
Jim Hogg.....	1,657	
Jim Wells.....	3,374	
Jones.....	1,298	
Karnes.....	3,047	
Kent.....	99	
King.....	dd	
Kinney.....	505	

[Number of persons]		
State/Adm. unit	Commodity distribution	Food stamp
TEXAS—Continued		
Kleberg.....	1,922	
Knox.....	532	
Lamb.....	638	
La Salle.....	1,513	
Lavaca.....	1,406	
Lee.....	1,093	
Leon.....	1,938	
Liberty.....	1,771	
Limestone.....	2,086	
Lipscomb.....	38	
Live Oak.....	1,375	
Lubbock.....	2,132	
McLennan.....	2,625	
Madison.....	1,077	
Marion.....	1,600	
Martin.....	72	
Matagorda.....	1,861	
Maverick.....	3,072	
Medina.....	1,239	
Milam.....	2,289	
Montague.....	976	
Moore.....	55	
Morris.....	879	
Motely.....	292	
Nacagdoches.....	2,107	
Newton.....	1,396	
Nolan.....	831	
Nueces.....	4,516	
Orange.....	1,302	
Panola.....	1,506	
Pecos.....		292
Polk.....	1,471	
Potter.....	1,348	
Presidio.....		723
Rains.....	370	
Real.....	409	
Red River.....		(?)
Robertson.....	3,757	
Sabine.....	442	
San Augustine.....	965	
San Jacinto.....	1,636	
San Patricio.....	4,600	
Scurry.....	764	
Shelby.....	1,003	
Smith.....	797	
Starr.....	6,430	
Stonewall.....	194	
Swisher.....	543	
Tarrant.....		6,513
Terrell.....		66
Terry.....	235	
Titus.....	1,114	
Tom Green.....	2,136	
Travis.....	9,943	
Trinity.....	1,085	
Tyler.....	834	
Upshur.....	1,779	
Upton.....	204	
Val Verde.....		
Del Rio (City).....	1,906	
Waller.....	1,242	
Walker.....	1,847	
Ward.....	747	
Washington.....	2,542	
Webb.....	10,705	
Wilbarger.....	813	
Willacy.....	3,477	
Williamson.....	1,820	
Wilson.....	1,010	
Zapata.....	1,351	
Zavala.....	1,709	
Texas total.....	262,074	39,180

¹ King County included with Cottle County.
² Red River County discontinued program as of September 30, 1968.

FOOD STAMP, MARCH 1969

Project area.....	Participation				Coupons				Fiscal year date	
	P. A.	Non-P. A. number persons	Total	Monthly change (percent)	Total value	Bonus value	Bonus total (percent)	Average bonus per person	Total coupons	Bonus coupons
Texas (10):										
Bexar.....	9,673	12,943	22,616	10	\$338,848	\$191,929	57	\$8.49	\$2,482,711	\$1,367,009
Brewster.....	66	163	229	-7	3,890	1,657	43	7.24	32,585	13,839
Culberson.....	37	103	140	17	1,789	868	49	6.20	16,722	7,881
El Paso.....	2,860	5,475	8,335	5	123,704	68,867	56	8.26	998,684	528,828
Hudspeth.....	12	148	160	9	2,332	1,136	49	7.10	20,188	9,947
Jeff Davis.....	37	69	106	29	1,803	738	41	6.96	11,665	4,652
Pecos.....	24	268	292	-8	4,506	2,281	51	7.81	42,871	22,374
Presidio.....	113	610	723	8	10,180	5,598	55	7.74	86,839	43,555
Red River.....	(?)	(?)	(?)		(?)	(?)			48,259	19,227
Tarrant.....	3,304	3,209	6,513		110,125	46,838	42	7.19	963,151	400,447
Terrell.....	1	65	66	16	1,230	448	36	6.79	11,359	4,130
Total.....	16,127	23,053	39,180	7	598,407	320,360	54	8.18	4,715,034	2,421,889

² Red River County discontinued program as of Sept. 30, 1968.

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The PRESIDING OFFICER (Mr. ALLEN in the chair). The joint resolution is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res. 126) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S.J. RES. 126

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 16(a) of the Food Stamp Act of 1964 is amended by striking "\$340,000,000" and inserting "\$750,000,000".

Mr. ELLENDER. Mr. President, I move that the Senate reconsider the vote by which the joint resolution was passed.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Otto F. Otepka, of Maryland.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The PRESIDING OFFICER. The clerk will state the nomination to the Subversive Activities Control Board.

The bill clerk read the nomination of Otto F. Otepka, of Maryland, to be a member of the Subversive Activities Control Board.

Mr. YOUNG of Ohio obtained the floor.

Mr. MANSFIELD. Mr. President, will the Senator from Ohio yield without losing his right to the floor?

Mr. YOUNG of Ohio. I yield for that purpose.

Mr. MANSFIELD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. YOUNG of Ohio. Mr. President, I move to recommit the nomination of Otto F. Otepka, and on the motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. YOUNG of Ohio. Mr. President, President Nixon's appointment of Otto F. Otepka to a \$36,000 a year post on the Subversive Activities Control Board was an outlandish piece of political expediency. Let us hope that it does not signal a return to that era of pointless suspicion, fear, character assassination, and ruined careers that marked the so-called McCarthyism of the 1950's.

When asked about the President's decision to nominate Otepka, the White House press secretary stated:

I think the appointment speaks for itself.

It certainly does and with revolting eloquence. The question involved has little to do with national security, subversion, or anything of that nature. What is involved is an official of the executive branch sneaking information, which he was forbidden to disclose to anyone, to representatives of the legislative branch. Otepka was chief of security evaluations in the State Department. In 1963 Secretary of State Dean Rusk removed him from this post for giving confidential security files to the Senate Internal Security Subcommittee without permission. No administrator with any self-respect could permit such disloyalty, and Secretary Rusk was correct in removing this witch-hunter from his position. Even Secretary of State Rogers refused to restore the disloyal Otepka to the post from which he has been ousted.

Furthermore, it has been revealed that a fund raised by groups with close ties to the lunatic rightwing splinter group, the John Birch Society, so-called, paid approximately 80 percent of the \$26,135 in legal expenses incurred by Otepka in his 4-year fight to win reinstatement as chief security evaluator in the State Department. During that period Otepka made numerous speeches at meetings of extreme rightwing gatherings. While he has denied any formal or informal connections with the John Birch Society or the Liberty Lobby, so-called, the fact is that he has attended rallies organized by Birch Society leaders. At least on one occasion he was formally introduced by a member of the Birch National Council. Furthermore, this rally was headed by Clarence Manion, a member of the national council of the "Birchsaps." When questioned about this by a reporter for the New York Times, Otepka said:

I am not going to discuss the ideological orientation of anyone I am associated with.

In his account of this incident to the subcommittee considering his nomination, Otepka offered the weak excuse that he felt he was being baited into making statements that could be used against him.

It has been established beyond any possible doubt that the Liberty Lobby, headed by Willis Carto whose Fascist inclinations and associations have been well documented, was one of his staunchest champions. That neo-Nazi lunatic group produced and distributed a film entitled "The Otepka Case" and its pamphlets consistently defended Otepka and attacked his critics.

Mr. President, it is interesting to note that J. G. Sourwine, chief counsel for the Senate Internal Security Subcommittee and one of the staff members who helped write the Judiciary Committee report praising Otepka, was the person through whom Otepka leaked the State Department documents when both were trying to smear Walt Rostow, the Kennedy-Johnson national security adviser, as a security risk. Now, I take a dim view of a man like Otepka, who seeks to play God with other people's patriotism.

Obviously, Sourwine has a personal interest in having Otepka confirmed by the Senate. Although the committee report seeks to disassociate Otepka from

any formal or informal connections with the John Birch Society or the Liberty Lobby, Sourwine certainly was aware of the activity of these lunatic rightwing organizations in behalf of Otepka. He knew or should have known that Otepka has called the Liberty Lobby "a reputable organization—patriotic," and Willis Carto, the neo-Nazi who runs it, a defender of "the fine traditions of American life." Furthermore, Sourwine himself when interviewed by Joe Trento of World Wide Features, not only expressed his high regard for Liberty Lobby, but went further saying:

Liberty Lobby often requests information about individuals and issues . . . I do not hesitate to supply anything this dedicated group requests.

Yet this "dedicated group" brazenly distributes "Imperium," the Mein Kampf of American nazism.

Mr. President, in the memorandum from J. G. Sourwine to the chairman of the committee on the Judiciary, reprinted in part 2 of the hearings on the Otto Otepka nomination, it is stated that over \$21,000 of the \$26,135 for legal expenses incurred for Otepka's defense was raised by the American Defense Fund organized in 1964 by James M. Stewart of Palatine, Ill. The memorandum goes on to state:

The American Defense Fund has no connection of any kind with the John Birch Society . . . according to Mr. Stewart.

The fact is that after careful research and inquiry to try to determine the names of the sponsors or directors of the American Defense Fund, I have been unable to determine any but Mr. Stewart himself. It is obvious that this is a one-man paper organization dedicated solely to exonerating Otto Otepka.

Mr. President, it has been reported to me that on June 16, 1969, 8 days ago, this same James Stewart attended a fund-raising party at the home of Julius W. Butler in Oakbrook, Ill., a Chicago suburb. This is the same Julius Butler who is an admitted fundraiser for the John Birch Society and active in several John Birch front organizations. He also is a sponsor of a New England Rally for God, Family, and Country held annually near Boston, which Otto Otepka attended last year. The guests at Mr. Butler's home last week included Robert Welch, founder and head of the John Birch Society, who spoke at length spewing forth the usual John Birch lunatic obsessions. Mr. and Mrs. James Stewart, I am told, were in charge of the refreshments that were served at the meeting and were introduced to the crowd and received applause.

This is the same James Stewart who stated to J. G. Sourwine that the American Defense Fund, which is James Stewart and him only, had no connection of any kind with the John Birch Society.

Surely, Mr. President, an investigator as trained and experienced as the counsel for the Senate Internal Security Subcommittee is said to be, should on his own have questioned Mr. Stewart's statement and delved further. Julius Butler, at whose home Stewart recently attended a Birch Society rally, admitted in a telephone conversation with a reporter from

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the New York Times that Otto Otepka had spoken to groups "of 15 to 20 or 30 or 40 people" at his home over the last several years. "He comes here whenever he comes to Chicago," said Butler. The New York Times also reported Mr. Butler said that in addition to his explaining his dispute with the State Department, Mr. Otepka also talks about treason in high places in Washington "and all the horrible things that are taking place."

Those Birchsaps, or Sons of Birches, as the former assistant minority leader, Tom Kuchel, of California, used to term them, are seeking to play God with other people's patriotism. They claim there are Communists in the State Department, on the faculties of our universities, and in the clergy. Of course, they could not name one.

Mr. President, as a free American, Otto Otepka has the right to join or associate with the John Birch Society or any other organization. He has violated no laws in accepting money from Birchites or Sons of Birches to use the terminology of our friend, Senator Thomas Kuchel, or other lunatic rightwing sources to meet legal costs of his unsuccessful fight for reinstatement as chief security evaluator of the State Department. However, I question whether a man with such a record—a man who unhesitatingly accepted more than \$22,000 from these groups—should be confirmed for a post in which he will judge the loyalty of American citizens and organizations.

Of course, he reported to the subcommittee that he would "resist with every resource at my command any attempt to establish in this country a Nazi, or Fascist, or Communist government, or any other form of totalitarianism."

His past record clearly belies this. In my view, any man who has accepted support from the John Birch Society, the Liberty Lobby, and organizations of that ilk has a warped concept of Americanism, has no place on the public payroll and certainly not in a position in which he will be called upon to judge the loyalty of other Americans.

Mr. President, on May 16, 1969, there appeared an excellent article on the Otepka nomination in the Washington Post entitled "Security Pooh-Bah." I ask unanimous consent to have it printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

SECURITY POOH-BAH

Otto Otepka's long and unfaithful service to the State Department certainly entitled him to some reward from those on Capitol Hill who were the beneficiaries of his peculiar form of infidelity. And for a while it seemed as though President Nixon had found an innocuous, if somewhat expensive, spot for him, as a \$36,000-a-year member of the Subversive Activities Control Board, an agency which has no work to perform and consequently no secrets to leak. The title probably seemed congenial, if not actually honorable, to Mr. Otepka. And President Johnson had already established a precedent for using the Board as a sinecure for the politically wounded and disabled.

But there is a scheme afoot, it appears, surreptitiously to turn the chairmanship of

the SACB from a sinecure into a seat of power, from a bad joke into an ugly menace. S. 12—cited as the "Internal Security Act of 1969"—a bill sponsored by Mr. Otepka's sponsor, Senator James O. Eastland, and by a collection of the Senate's ultraconservative sedition hunters, would create in the United States Government a brand-new super-snooper agency to be designated the "Security Administration for Executive Departments" and to be "subordinate only to the President of the United States." This new agency would serve as a sort of, Poliburo, supervising all security clearances, would have power to initiate cases before the SACB, would conduct continuing surveys and inspections of the loyalty and security activities of all Executive agencies, would train security personnel and would exercise a variety of additional powers. Although the bill does not actually so designate him, the proper title for its Administrator would be "Commissar."

The bill contains an interesting provision: "The Chairman of the Subversive Activities Control Board may be appointed as Administrator, and if so appointed may continue to hold the position of Chairman of the Subversive Activities Control Board during any term for which he shall have been appointed and designated as such Chairman." Now, what do you suppose the architects of this legislative extravaganza have in mind? How foresighted they are! The present Chairman of the SACB, John W. Mahan, a deserving Democrat—deserving of a more honorable office—could readily be replaced by—guess who?—the refurbished Mr. Otepka, and the authors of this remarkable measure would, if they managed to get it enacted, then have their own particular darling in one of the seats of the mighty.

It is in the light of this possibility that one must evaluate the statement made by Senate Majority Whip Edward M. Kennedy that "I don't think there is room on the Subversive Activities Control Board for someone whose basis of strength is the support of the John Birch Society and the Liberty Lobby." How much more vital it is to keep such a person from the office of Security Pooh-Bah. There must be room for Mr. Otepka on the staff of the Senate Internal Security Subcommittee where he will be relatively harmless and feel entirely at home. S. 12 is a nightmare. With Otto Otepka administering it, it would become a reality.

Mr. YOUNG of Ohio. Mr. President, it is difficult to reconcile Secretary Rogers declining to reinstate Otepka with the President's nominating him to a \$36,000 post, albeit in a worthless Federal agency. If the President had deliberately set out to make his administration appear ludicrous he could not have chose a better means than through promoting Otepka. This nomination is an insult to the American people. It is pure political chicanery, and the Senate should reject it forthwith.

The Otepka nomination raises an issue of more importance than the promotion of a petty, self-seeking bureaucrat. Again it raises the question as to why the Subversive Activities Control Board has been permitted to exist at all. The President's appointment of Otepka might be simply dismissed as his tossing a bone to restive rightwing elements. More important, it may be an indication that he intends to keep alive part of his past as a Communist chased by resurrecting the discredited Subversive Activities Control Board.

Mr. President, earlier today, I introduced a bill to once and for all abolish the SACB. I am hopeful that this legislation will be acted upon as swiftly as possible. It is high time to rid the Federal

Government of this insidious leftover of the witchhunts, this boondoggle costing hundreds of thousands of dollars of taxpayers' money annually.

In the 19 years since its creation, the Subversive Activities Control Board has served no useful purpose and has not made a single contribution to the welfare or safety of the Nation. The major section of the statute creating it has been held unconstitutional. From 1965 through 1967, the Board did not hold a meeting and there were no cases pending before it. In fact, in 1967, Congress enacted legislation specifying that the Board had to hold at least one hearing in 1968 or go out of business. Subsequently, under great political pressure Attorney General Clark sent the Board seven cases and the Board started its hearings in September 1968. Since then, it has dealt with three cases naming minor Communist Party functionaries as members of a "Communist-action" group, a process that involved only 6 days of hearings, 1 day of oral arguments and reading of extensive FBI reports. Recently, the Board began hearings on three more cases which are nothing more than "make work" cases to keep this worthless agency in business.

Apart from the five Board members, only 10 employees remain, who do nothing today but send messages to one another and expend energy once or twice a month to draw their salaries. Their average salary is one of the highest in the entire Federal bureaucracy. This year this boondoggle is costing taxpayers more than \$365,000, all completely wasted. The continued expenditure of taxpayers' money for this absurd boondoggle is unconscionable at a time when we are looking for ways to save taxpayers' money.

Mr. President, there is no need whatever to continue this virtually dead agency. According to J. Edgar Hoover, who should know, the Communist Party in the United States has lost 90 percent of its membership since reaching its numerical peak strength 25 years ago. The FBI report is that there were 80,000 Communists in the United States in 1944. The Soviet Red Army was crushing Hitler's "supermen" in Europe, and in America there was tolerance for home-grown Communists. The Soviet Union was our ally at that time and some 20 million of its finest youngsters had given their lives to help save the world from Nazi domination.

Quoting J. Edgar Hoover again, at the present time he estimates that the numerical strength of the Communist has nose-dived and instead of being 80,000, as it was in 1944, their total strength in the United States today is between 8,000 and 10,000.

In that total of 8,000 or 10,000, Mr. President, are included those FBI agents who have infiltrated—we do not know in what numbers—and are masquerading as Communists. At most, there is one Communist in the United States for every 21,000 non-Communists, the odds in favor of free institution being 21,000 to 1.

Customarily from 80,000 to 83,000 spectators sit in the Cleveland Stadium Sunday afternoons witnessing National League football games, cheering on the

Cleveland Browns. Mr. President, many, many times I have been seated with those 80,000 to 83,000, and I have never felt any fear whatsoever of the Communists there. Taking the FBI calculations—and they should be correct—then all of three people in that entire crowd of 80,000 might be Communists. Should we be afraid that those few will harm the rest of us? Furthermore, we have on our side the brains and brawn of the city and State police, the FBI, the Army, the Air Force, the Navy—and never forgetting the Marines. Do we need the five men on the Subversive Activities Control Board and some 10 employees feeding at the public trough to gallop to our aid? If it is claimed that we no longer are the land of the free, let us at least be the home of the brave.

When the SACB was created in 1950, it was a bad idea. That was my opinion then; that in my opinion now. Nothing has happened to change it. Instead, the evidence clearly and convincingly shows an effort to introduce totalitarian uniformity into political thinking. The Board, by the very fact it is permitted to exist, continues to be a challenge to the basic principles of the democratic way of life of our Republic.

In 1950, when President Truman vetoed the McCarran-Walter Act which created this bureaucratic monstrosity, he said in his veto message:

The provisions of the act are not merely ineffective and unworkable; they represent a clear and present danger to our institutions.

His warning has been validated in numerous Supreme Court decisions which have all but nullified that legislation.

The SACB is part of that debris of the witch hunts of the 1950's, the so-called period of "Joe McCarthyism," that still lingers with us to some extent. It is a part of that era in which a number of practices were adopted which were claimed to be necessary for the national security, which would have shocked our forefathers.

Many of the nefarious laws of the McCarthy era were subsequently declared unconstitutional by the Supreme Court of the United States. I maintain that, from the standpoint of civil liberties, historians of the future will credit the Supreme Court of the United States with playing a major role in the preservation of our traditional concepts of individual liberty.

We have recovered somewhat from that era, but the Subversive Activities Control Board, unfortunately, is still with us.

Mr. President, it is obvious that today the Subversive Activities Control Board is nothing more than a sop to the right-wing and a convenient place for a President to place his friends. Senators will recall that in 1967 President Johnson nominated Simon F. McHugh, Jr., to the SACB. At the time Mr. McHugh was a minor executive in the Small Business Administration, but, more important, he was the husband of a one-time personal secretary to President Johnson.

So, he became a member of that Board by Presidential appointment, and he is now a member of the Board, although his

appointment was criticized violently by some of those who are now opposing this nomination.

The Chairman is John W. Mahan, a former national commander of the VFW, who headed a Veterans for Johnson Committee in 1964. When asked by a White House aide to take a vacancy on the Board, he replied that he had never even heard of it. The other two members are Leonard L. Sells, who was an attorney for the Renegotiation Board, and John S. Patterson, neither of them with a distinguished background of public service entitling them to a \$36,000 a year appointment.

Mr. President, the future safety of this country does not depend in even the slightest measure on the Subversive Activities Control Board. It does depend on citizens and leaders who realize that hunger, poverty, and unemployment pave the way to communism. Those who have appropriated the issue of communism to serve their political ends are poor reeds to lean on in a fight against communism. These are the men who will be found continually on the side of the powerful special interests. They can always be depended upon to oppose all measures to make life better for more people and to insulate them against communism—protection against dependence on old age, unemployment, and occupational hazards, the elimination of poverty, slums, and hunger and malnutrition that afflict millions of Americans, decent housing, medical care for the elderly, farm programs based on the knowledge that a healthy agriculture is potent insurance against communism, the right of labor to bargain for a fair share of the wealth it helps to create, and providing a decent education for every American child.

Mr. President, let us at all times manifest the pioneering spirit of free and courageous men and women intent on maintaining our way of life and adhering to those sacred guarantees in our Constitution. Let us reaffirm the ideals and principles that have made our Nation the hope of the world. As one who despises Communists, communism, and Communist methods, I urge that this scarecrow agency, the Subversive Activities Control Board, be discarded along with all reminders of totalitarianism in our society.

Mr. President, it is crystal clear that despite his denials Otto Otepka has strong ties to un-American extreme right-wing organizations and many of their leaders. Also, it appears that the response from J. G. Sourwine of the Judiciary Committee staff to specific inquiries of Senators HART, KENNEDY, BURDICK, and TRUNING respecting finances and connections of Otto Otepka was inconclusive, based almost entirely on the statements of individuals involved, and seriously lacking in depth and careful research. I believe that the committee should investigate further any formal or informal connections between Otto Otepka and the John Birch Society, the Liberty Lobby, and any persons or organizations actively associated with either of these lunatic fringe groups.

Therefore, Mr. President, I move to recommit the nomination of Otto Otepka. I yield the floor.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, with the full concurrence of the minority leader, that the vote on the pending motion take place not later than 2:30 p.m.

Mr. DIRKSEN. With the understanding that at least 30 minutes of the time will be given to the proponents of the nomination.

Mr. DODD. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. DODD. Mr. President, I simply want to say, with all deference, that I have talked with the distinguished majority leader. That would give us how much time? The Senator mentioned 2:30. I do not know how many speakers there are.

Mr. MANSFIELD. There will be time, Senator.

The PRESIDING OFFICER. The Chair would inquire of the Senator from Montana whether his request that the vote on the nomination take place at 2:30 o'clock will be a vote on the pending motion?

Mr. MANSFIELD. That is correct, the vote on the pending motion.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none and it is so ordered. The vote on the pending motion will occur at 2:30 o'clock p.m.

Mr. MANSFIELD. Let me say that if any complications arise at that time, we will take care of them then. I want to thank the Senator from Ohio.

Mr. EAGLETON. Mr. President, earlier this year, in connection with the nomination of Walter J. Hickel as Secretary of the Interior, I had occasion to do some study and research on the advice and consent function of the U.S. Senate as it related to nominees for various governmental posts as submitted by the President of the United States. My statement on same and my reasoning in supporting Mr. Hickel's nomination will be found at page S780 of the CONGRESSIONAL RECORD of January 22, 1969.

In that statement, I pointed out the criteria which the Senate might keep in mind in the case of a nominee for the Cabinet, the President's official family, the members of which serve at the pleasure of, at the discretion of, and to the possible embarrassment of the President of the United States.

I also pointed out that different criteria were necessarily involved in the consideration of appointees to the Federal bench, for life, or to regulatory bodies for a fixed term, where the control of and the direct responsibility to the President were absent.

I said at that time:

The debates at the Constitutional Convention of 1787 shed little light on what criteria the Senate should apply in exercising its advice and consent authority. Through almost two centuries of experience in implementing this responsibility, different Senators under different circumstances facing different questions have exercised their prerogatives in different ways.

In studying the historical evolution of this senatorial authority, I am constrained to conclude that a standard or criterion applicable to one category of nominee may not neces-

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sarily be the proper standard for another category of nominee.

It is one thing to consider the background and qualifications of a potential Supreme Court Justice to be appointed for life. It is another thing to consider the background and qualifications of an appointee to an independent regulatory agency who will serve independently of the President and often for a fixed term of years. It is still another thing to consider the background and qualifications of an appointee to the Cabinet who operates under the direction of and at the pleasure of the President.

In one of the few books devoted to the advice and consent function, Prof. Joseph P. Harris made these observations:

"The tests applied by the Senate in considering nominations vary widely, depending in part on the character and importance of the office concerned and whether the nomination is one to which the Senate gives individual attention. Well-established custom accords the President wide latitude in the choice of members of his own Cabinet, who are regarded as his chief assistants and advisers (p. 379).

"It is appropriate for the Senate to consider the philosophy and general outlook of nominees to high federal offices, particularly to regulatory bodies and to the bench. These offices stand in a different position from that of the heads of executive departments for whose actions the President is responsible (p. 384).

"The confirmation of presidential nominations to independent regulatory commissions is always of especial importance, for members of these commissions are regarded as having a special relationship to Congress. The function of the Senate in passing upon the nominations is not limited to the technical qualifications of the nominee and his fitness for the office; it is appropriately concerned with his stand on broad policies and the effect his appointment may have upon the functioning of the commission. Often the character and attitude of the officers who head an agency have as much to do with its policies as the legislation under which it operates. The Senate must therefore consider whether a nominee to a regulatory commission is in sympathy with the objectives of the laws which he will be called upon to administer, and whether he will support policies which are agreeable to the majority of the Senate (p. 178). Joseph P. Harris, 'The Advice and Consent of the Senate' (University of California Press, 1953)."

Today we consider the appointment of Otto F. Otepka to be a member of the Subversive Activities Control Board to serve for a fixed term ending August 9, 1970.

Mr. President, it is therefore the duty of the Senate to consider the nature of the position for which Mr. Otepka has been nominated and the nature of Mr. Otepka's case history as bearing thereon.

THE ROLE OF THE SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board—which I shall hereinafter refer to as SACB—was created by law in 1950. Through the years since its creation, its duties have been drastically reduced by decisions of the Supreme Court of the United States. However, in 1968 Congress granted further powers to the SACB.

The Board is now empowered to hold hearings and to compel the appearance of witnesses and the production of evidence by subpoena for the purpose of determining whether groups named by the Attorney General are Communist-action or Communist-front groups, or

whether named individuals are members of Communist-action groups.

Persons found by the SACB to be Communists or members of Communist-front groups are prohibited by law from holding Federal appointive positions, and from holding jobs with labor organizations or in defense facilities.

Groups found by the Board to be Communist organizations must announce themselves as such in using the mails or any broadcast media and must be denied tax-exempt status.

Finally, it should not be ignored that it is proposed in the present session of Congress in S. 12 that the aforementioned powers be considerably expanded.

The SACB is, then, a board with existing authority and prospectively, at least in the minds of the sponsors of S. 12, it will have even expanded authority in the area of adjudging, evaluating, and handling security matters and files.

To this Board Mr. Otepka has been nominated by the President.

THE OTEPKA CASE

Otto Otepka's case within the State Department began in 1963. During the course of hearings before the Senate Internal Security Subcommittee Mr. Otepka handed over to Mr. J. G. Sourwine, chief counsel of the subcommittee, some 34 documents of which 11 were classified ranging in degree of classification from "confidential" to "official use only" to "limited official use."

Otepka was charged with "conduct unbecoming an officer of the Department of State" in connection with the handing over of these papers to Mr. Sourwine. At the outset he was also charged with other allegedly improper acts, but these other charges were later dropped by the Department of State by the time the case was presented to the hearing officer.

Specifically, Otepka was charged with violating the Presidential directive of March 13, 1948, which provides, in part, as follows:

All reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies), shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business.

The report of the hearing officer is printed at pages 75-84 of the April 15, 1969, Judiciary Subcommittee hearing on the instant nomination—hereinafter referred to as the "hearing." I call to the attention of the Senate findings No. 12 and No. 42 which I read herewith verbatim:

No. 12. Based upon my consideration of all the testimony and evidence on record in the Appellant's case, I find that the Appellant delivered the two memoranda and investigative report to a person outside of the Department of State without authority and in violation of the Presidential Directive of March 13, 1948 (13 FR 1359). I find that this action is conduct unbecoming an officer of the Department of State. I find no extenuating circumstances which would mitigate the delivery of the two memoranda and investigative report to the person outside the Department. (See Hearing p. 78)

No. 42. The Code of Ethics for Government Service, 86th Congress, 1st Session, House Document No. 103, passed by the

Congress of the United States on July 11, 1958, states in part:

"Any person in government service should:
"I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"II. Uphold the Constitution, laws and legal regulations of the United States and of all governments therein and never be a party to their evasion. . . ."

I consider the Presidential Directive of March 13, 1948, as a positive regulation for the conduct of Executive Branch personnel in the administration of the employee loyalty program. The Directive is reasonable enough, setting forth a procedure whereby loyalty-security information can be made available to the Congress.

Mr. President, I repeat that at this point for emphasis because I think it is vital to the case. The hearing officer said:

The directive is reasonable enough, setting forth a procedure whereby loyalty-security information can be made available to the Congress.

That is a course of procedure which Mr. Otepka did not follow.

The hearing officer went on to add:

I find that the Appellant, as an employee of the Executive Branch, is bound to the proper implementation of the Presidential Directive. The Code of Ethics for those in Government Service requires adherence to a proper regulation and requires further, that no government employee be a party to the evasion of a legal regulation. The Appellant has requested a consideration of all the circumstances of this case which he states permit him to apply a different rule. I have so examined all the circumstances of the case and find no reason to evade the application of the foregoing rule. (See Hearing p. 83)

Mr. President, on December 9, 1967 Secretary of State Dean Rusk affirmed the finding relating to Otepka, and Otepka was reprimanded, reduced one civil service grade, and transferred to duties "which do not involve the administration of personnel security functions." See hearing, page 86.

The case then moved out of the Department of State to the U.S. Civil Service Commission.

On May 20, 1968, the Chief of the Appeals Examining Office of the Civil Service Commission made his findings, again affirming the prior findings. The report, in part, reads as follows:

He [Otepka] delivered to the Chief Counsel, Senate Subcommittee on Internal Security three documents of a security nature. He had no right to take the files and records of his agency and release information which he knew may be disclosed only by the President. Furthermore, he had no right to invade the privacy of those who were named in the three documents. It is a fair conclusion that having taken this action one time, he might well do it again and it is reasonable for Management [the Department of State] to discipline him and remove him from the area where he has demonstrated capacity for harm. Therefore we conclude that the action taken by the Department of State was for a cause as will promote the efficiency of the service and that the decision to effect the action was not unreasonable, arbitrary or capricious. (See Hearings, p. 91)

On September 25, 1968, the Board of Appeals and Review of the U.S. Civil Service Commission rendered its decision in the Otepka case, again affirming the previous findings. The Board of Appeals said, in part, as follows:

The appellate record establishes that the appellant was familiar with the contents of the aforementioned Presidential Directive and that he knew of the prohibitions contained therein. Surely, the appellant, who had occupied highly responsible security positions in the Department of State, including that of Deputy Director of the Office of Security, as well as the position of supervisory Personnel Security Specialist, was under a duty to uphold and comply with the Presidential Directive of March 13, 1948. His failure to do so, under the circumstances disclosed by the evidence of record, clearly constituted conduct unbecoming an officer of the Department of State, as the Department alleged. . . .

On October 5, 1968, Mr. Otepka announced in the press that he would appeal his case to the Federal courts, as was his right. However, he never did pursue that appeal, dropping the appeal of his own volition.

When President Nixon assumed office, he instructed Secretary of State Rogers to review the case.

On February 19, 1969, Secretary of State Rogers wrote to Mr. Otepka stating his conclusion that "the case had been fully and exhaustively litigated within the executive branch of the Government in accordance with applicable provisions of law and the regulations of the Department of State and Civil Service Commission" and that the case would not be reopened.

THE CASE AS IT APPLIES TO MR. OTEPKA'S
NOMINATION TO THE SCAB

Mr. President it appears to me that Mr. Otepka has had his full day in administrative court, so to speak, and could have had an even fuller day in Federal court had he wished to pursue that remedy.

As a governmental employee handling security matters, he has been found wanting by first the State Department hearing officer, next the Secretary of State, next the Civil Service appeals examining officer, next the Civil Service Commission, and next the Civil Service Commission Board of Appeals and Reviews. Secretary of State Rogers refused to reinstate Mr. Otepka.

Mr. Otepka knowingly and willfully transmitted State Department security documents in violation of a Presidential directive. He did so, as the hearing officer found, with "no extenuating circumstances which would mitigate the delivery of the two memorandums and investigative report to the person outside the Department." See hearing, page 78.

Mr. President, I cannot see how, under these circumstances, the Senate can now give its advice and consent—the constitutional value and validity of which most of us are now striving to restore—to elevate Mr. Otepka to a position of even higher prestige and power in the field of security.

For us to do so is to say that the record of all the previous hearings and the findings therein were baseless.

For us to do so is to say that the Senate of the United States substitutes itself as a Federal appellate court, a court to which Mr. Otepka declined to take his case.

For us to do so is to close our eyes and minds to the exhaustive hearings of record compiled in this case.

For us to do so is to reward an intentional violation of a Government security order by placing the violator in the highest echelon of security control and supervision.

For us to do so is to introduce Mr. Otepka once again into the security field after he had been transferred out of such field because of an intentional breach of security conduct.

Mr. President, this is seriously inconsistent—it is more than that: It is blindly hypocritical.

Mr. President, other Senators will present additional matters they wish to have considered by further committee hearings on this nomination. They, of course, have the right to express their doubts. For myself, without delving into any other areas and confining myself to the appendix to the transcript of the hearing before the subcommittee, on the desk of every Senator, I am satisfied that Mr. Otepka, by reason of his past conduct in the handling of security affairs, is an inadequate nominee for an even loftier position in the security field.

Therefore, Mr. President, I shall vote against the confirmation of Mr. Otepka as a member of the Subversive Activities Control Board.

I yield the floor.

Mr. GOODELL. Mr. President, I cannot in good conscience support the nomination of Mr. Otto F. Otepka to be a member of the Subversive Activities Control Board.

I have the highest regard for the principle that the President should have wide discretion in making major appointments. Nevertheless, the Constitution places upon the Senate the obligation to determine the basic qualifications of nominees.

The Subversive Activities Control Board, having been stripped of its original functions which were declared unconstitutional, now serves little or no useful purpose.

Despite its lack of usefulness, the Board can by its actions vitally affect the lives and careers of those whom it investigates. For this reason, its members ought to be men of discretion and judgment. I am not satisfied that Mr. Otepka is such a man.

The Internal Security Act which created this Board was enacted at the height of the Joseph McCarthy era. President Truman, with the full support of J. Edgar Hoover, recognized its dangers and vetoed, it saying:

This bill would work to the detriment of our national security.

The act required the registration of Communists in violation of their fifth amendment rights under the Constitution. Other of its ill-advised provisions authorized the creation of detention camps in this free country.

In 1965, the Supreme Court virtually did away with the Board by declaring unconstitutional its power to police the compulsory registration of Communists. Thereafter, the Board did nothing and did not even meet for 3 years. Nevertheless, its five members each were paid handsome salaries of \$26,000 a year. Appointments to the Board became payoffs

for political favors. The taxpayers paid a quarter of a million dollars a year—or over \$5 million in the history of the SCAB—for an agency that accomplished nothing.

Last year, Congress renewed the powers of the Board by authorizing it to hold hearings to determine whether groups or individuals named by the Attorney General are Communist affiliated. This passed the Senate by a vote of only 3 to 2, with 95 Members absent.

An amendment to this legislation provided that the Board would expire unless the Attorney General sent names to it before the end of 1968. At the last moment, the Attorney General submitted a few names to the Board to prolong its precarious existence.

The Board is not needed in order to prosecute those who actually conspire to overthrow our Government.

The Board is not needed to investigate subversives of the right or the left. The FBI has ample powers to do this.

The Board's only function is that of labeling organizations as Communist or Communist fronts. The statutory standard of what "Communist" means is so vague that this can seriously jeopardize the basic individual freedoms guaranteed by our Constitution.

The Board is directed only at the world Communist movement. It does not concern itself with totalitarian organizations of the extreme right—which can endanger our liberties just as gravely as those of the extreme left.

Useful or not, the Board nevertheless can profoundly affect the lives of those it investigates. It determines that named individuals are members of Communist-action or Communist-front organizations, this will prevent them from holding public office and will seriously diminish their chances of obtaining or keeping private employment.

Because of its power over the lives of American citizens, the Board must be composed of men who meet high standards of fairness, discretion, and judgment.

On the basis of his record, I am not convinced that Otto Otepka has shown these qualities.

The majority report of the Senate Judiciary Committee, which has recommended his confirmation, discusses extensively whether Mr. Otepka has lied, engaged in other misconduct, or has been associated with individuals or organizations of a subversive character. It concludes that he has not.

The report does not, however, satisfactorily answer the question whether Mr. Otepka in his actions has demonstrated the caliber of judgment that would justify his being appointed to such a sensitive post.

Mr. Otepka served as the State Department's chief security investigator until 1963, when he was removed from this job. Two boards—a specially appointed State Department investigative board and a Civil Service Appeals Board—upheld his demotion.

His removal by the State Department from matters involving the administration of personnel security functions was

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sustained by the Democratic Secretary of State, Dean Rusk. His Republican successor, William P. Rogers, refused to reinstate him.

I do not understand a double standard by which a man who has been determined to be unfit to hold a security post in the State Department is nevertheless fit to hold an even higher ranking and higher paid position in a major Federal security agency.

If, as a Democratic and a Republican Secretary of State have determined, Mr. Otepka is not suited to pass upon sensitive personnel security matters in the State Department, how can he be qualified to pass upon matters of a similar nature as a member of the Board?

Can it be that the Board is a "harmless" place for Mr. Otepka, because it has been inactive for so long? This consoling thought is no longer true. The Board was given renewed powers by Congress last year, and the Attorney General has been activating it by sending it the names of persons to investigate.

It may prove even more hazardous to have Mr. Otepka serve as a member of the Board than as a State Department security evaluator. In the latter post, his actions were at least reviewable by his superiors. As a member of the Board, his actions will be reviewable only by the courts.

This appointment would become still more sensitive if Congress were to enact the proposed Internal Security Act of 1969, S. 12, introduced this year and sponsored by one-third of the members of the Senate Judiciary Committee. That bill, if enacted, would create a new Security Administration for Executive Departments with sweeping investigatory powers, and provides that the Chairman of SACB may also be Chairman of this powerful new agency.

As I stated earlier, I believe the Board serves no constructive purpose. Some may disagree with this characterization. Some may contend that the Board can perform an important public disclosure function. If one were to accept this premise, it becomes even more important that the members of the Board be highly respected men, in whose judgments the public will believe.

Mr. Otepka does not enjoy this sort of public confidence. His State Department activities have generated widespread misgivings. So have widely publicized reports that he has been associated with rightwing causes. So has the vocal support he has received from extreme rightist groups which he has not fully repudiated.

In short, the Subversive Activities Control Board is the wrong agency and Mr. Otepka is the wrong man. The nomination should not be confirmed.

Mr. DODD. Mr. President, I take the floor to support the nomination of Otto F. Otepka to be a member of the Subversive Activities Control Board.

The Otepka nomination was favorably reported by the Judiciary Committee on May 29. Two members of the committee, however, signed dissenting views, while four filed individual statements. It is my belief that their dissent or reservation was based on a misunderstanding of the

facts, because there has, regrettably, been a good deal of misrepresentation about the Otepka case in the press.

This is a good appointment. It is my hope that a detailed presentation of the facts will help to persuade those Senators who have expressed doubts, or who harbor doubts, about Otepka's associations, or about his conflict with the Department of State, or about his sensitivity and judgment.

The press campaign against Otto Otepka has been spearheaded by Drew Pearson, the lying character assassin and his trained jackal, Jack Anderson. Through their repeated columns carried in hundreds of newspapers across the country, they have unquestionably been able to influence other writers and commentators and, in a minor way, to influence congressional attitudes. Their success has been limited. But by dint of repeating the most outrageous lies as though they were statements of fact, they have been able to make many honest people believe that there must be some substance to their misrepresentation.

There is nothing new about this technique, of course. It is the old technique of "the big lie," at which Pearson and Anderson are past masters.

In the several columns they have written to date on the Otepka matter, Pearson and Anderson have told a total of several dozen separate lies; and their major lies, as is their custom, have been repeated over and over again.

The first column, for example, had a single sentence which contained three distinct lies, crowded into a mere 20 words. The sentence in question read:

The classified papers which Otepka gave Dodd pertained to the security clearance of several officials, the most important being Walt Whitman Rostow.

The fact is that Otepka never gave me any papers of any kind, either inside the hearing room or outside the hearing room.

The fact is further that I hardly knew Otepka.

And the fact is finally that I never had any contact with him outside the hearing room.

The three documents which form the basis for the State Department's charge against Otepka were officially made part of the investigation record in a meeting on August 12, 1963, presided over by Senator HRUSKA. The hearing record shows that I was not present on that day.

This was lie No. 1.

The fact is, further, that Otepka turned over no documents from the personnel security files of any official.

This was lie No. 2.

And finally, the fact is that the name of Walt Whitman Rostow did not figure in any way in the several documents Otepka gave the subcommittee or in his testimony before the subcommittee or in the hearings on State Department security.

This was the third lie in the Pearson-Anderson sentence.

The purpose of this factual recitation is simply to establish once again that Pearson and Anderson are the most reckless and malicious liars who ever rated a syndicated newspaper column.

WHO IS OTTO OTEPKA?

Before I go on to deal with the major allegations that have been made against Otepka by Drew Pearson and by others, it would be appropriate to establish for the record the essential facts about Otto Otepka, about his conflict with the Department of State, and about his qualifications for the position to which he has been nominated.

Otto Otepka is an outstanding example of the self-made man who has risen from the humblest position in government to very high position by dint of his own efforts and ability.

His unbroken record of advancement over a period of 25 years is by itself a powerful proof that he enjoyed the esteem and respect of his various superiors, until he ran into difficulties with the State Department bureaucracy in 1963.

Otepka went to work for the U.S. Government in 1936.

In 1942 he became an investigator and security officer for the Civil Service Commission, and he held this position until 1943 when he enlisted in the U.S. Navy.

Otepka was honorably discharged from the Navy in 1946 with the rank of petty officer first class.

Returning to his old job with the Civil Service Commission, he continued to work as an investigator and security officer until 1953, when he was transferred to the Office of Security in the Department of State.

Otepka's outstanding competence won him advancement in August, 1953, to the position of Chief of the Evaluations Division of the State Department Office of Security.

Over the ensuing years, Otepka won nothing but praise for his performance from the top people in the Department.

In September, 1955, Mr. Dennis Flinn, the Director of the Office of Security, stated in a memorandum that Under Secretary Herbert Hoover, Jr., had "gone out of his way to express appreciation for Mr. Otepka's work," in particular, for the "form, substance, and objectivity of presentation."

In April of 1957 Otepka was advanced to the position of Deputy Director of the Office of Security, in which position he became the effective chief of the State Department's personnel security operations.

Later that year his work won special commendation from Mr. Loy W. Henderson, Deputy Under Secretary of State for Administration, who said that Otepka deserved "special commendation" for his handling of many delicate cases of security clearance for appointive office.

In 1958, Otepka received the Meritorious Service Award from Secretary of State John Foster Dulles.

In May of 1962, the Head of the Office of Security, Mr. William O. Boswell, in an official memorandum, said:

Over the years Mr. Otepka has made a very real and substantial contribution to the Office of Security and hence to the national security.

And he praised his ability and dedication to the security program.

Even after formal charges had been brought against Otepka by the State De-

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partment, the then Under Secretary of State for Administration, Mr. William Crockett, described Otepka to the committee as "a knowledgeable, realistic security man."

Here is a man who over a period of several decades served the U.S. Government in various capacities; whose performance won him continuous advancement and repeated praise from highly demanding superiors whose record was without blemish or flaw.

This is the man whom we are now told is untrustworthy and incompetent and undeserving of the high office to which he has been nominated.

By commonsense standards of logic and justice, I say that this just does not make sense.

Now, let us examine the charges against Otepka one by one.

THE STATE DEPARTMENT'S ACTION AGAINST
OTEPKA

The only argument that has been made against Otepka that has even the appearance of substance is that the State Department found it necessary to discipline him on the basis of charges brought against him by Secretary of State Rusk.

I have great respect for former Secretary of State Rusk, under whose administration the charges against Otto Otepka were initiated. But, having presided over many of the hearings on the question of State Department security, I am convinced that those subordinates who handled the Otepka case did the Department of State and Secretary Rusk himself a profound disservice.

It is perhaps the nature of bureaucracies that they must always seek to vindicate their errors. And this is probably why the State Department persisted in its mean and unreasoning campaign against Otto Otepka, even after his accusers had been dismissed for perjury.

The story of the shameless campaign waged against Otto Otepka by certain State Department officials is documented in the many volumes of hearings on the question of State Department security conducted by the Senate Subcommittee on Internal Security.

Otto Otepka had served in the field of security for a number of years when he first appeared before the Senate Subcommittee on Internal Security in 1961. At that time he held the position of Deputy Director of the Office of Security in the Department of State. His efficiency rating had always been "excellent"; and in 1958 he had received the Meritorious Service Award from Secretary of State John Foster Dulles.

But while Otto Otepka was fair, he also believed in sound security procedures. For this he incurred the wrath of certain people in the Department.

And so, they began, first, to restrict his functions.

Then they began to monitor his burn basket.

Then they locked him out of his office and denied him access to his files, although no charge had yet been brought against him.

No one suspected of espionage or disloyalty has, to my knowledge, been sub-

jected to such surveillance and humiliation. But Otepka was not suspected of disloyalty or espionage. He was suspected very simply of cooperating with the Senate Subcommittee on Internal Security and of providing it with information that some of his superiors found embarrassing or objectionable.

On November 5, 1963, it was announced that the State Department had decided to dismiss Otto Otepka. I immediately took the floor of the U.S. Senate to protest the dismissal, which I described as a challenge to responsible government and an affront to the Senate as a whole.

Among other things, I pointed out that while State Department officials had denied under oath that a listening device had been installed in Otepka's office, the Subcommittee on Internal Security had proof that such a device was in fact installed.

In the ensuing colloquy on the floor of the Senate, there was discussion of possible perjury charges against the State Department officials involved.

The following morning, November 6, the Subcommittee on Internal Security received three letters from the State Department officials to whom I had referred without naming them: Mr. John F. Reilly, Deputy Assistant Secretary for Security; Mr. David I. Belisle, deputy to Mr. Reilly; and Mr. Elmer Dewey Hill, Director of the Division of Technical Services in the Office of Security.

It was also announced that the dismissal was revoked and that Otepka was, instead, being suspended.

In essence, the three State Department officials who originally told the subcommittee that they knew absolutely nothing about an effort to install a listening device in Otepka's office and had not been party to such effort, now told the subcommittee that their previous statements were untrue and misleading, and that they did in fact have knowledge of the installation of a device in Otepka's telephone.

Messrs. Reilly and Hill, having been caught in the act of perjury before a Senate committee, were obliged to submit their resignations.

However, it later developed that Mr. John F. Reilly was able to move on to another important position in the Federal Communications Commission because his State Department file contained no record of the fact that he had committed perjury and had been obliged to resign on this account.

As for Mr. Belisle, not only was his resignation not requested by the Secretary of State, but he has since then moved on to higher positions.

The record also established that it was Mr. John F. Reilly, the chief of the perjurers, who had framed the charges against Otepka on the basis of which the Secretary of State acted against him.

And it was under the same Mr. Reilly that an effort was made to enlarge the case against Otepka by planting phony evidence in his burn basket. When Otepka was able to demonstrate the fraudulence of this planted evidence, the State Department was obliged to drop most of the charges that had originally been brought against him.

Essentially what remained was the charge that Otepka had violated State Department regulations by allegedly turning over confidential documents relating to personnel security to the Internal Security Subcommittee.

Now I do not say that executive department employees should have the right to violate the stringent rule against revealing or turning over the contents of personnel security files. But this is not what was involved here.

Otto Otepka did not "pilfer" State Department files as has been alleged.

Nor did he turn over to the subcommittee any classified papers from the personal security files of State Department officials.

Actually, Otepka gave the subcommittee only three documents about which the State Department complained.

Otepka had informed the subcommittee that he had written a memorandum to his superior, Mr. Reilly, recommending a tightening of security procedures. Mr. Reilly denied to the subcommittee that he had received any such memorandum from Otepka. In order to prove that he was telling the truth and that Mr. Reilly was lying, Otepka gave the subcommittee a copy of his original memorandum to Reilly, which had been initialed on receipt by Reilly; and he also gave the subcommittee a copy of a memorandum written by Reilly to another State Department office in which he made reference to the Otepka memorandum.

It was of vital importance to the subcommittee to know who was lying and who was telling the truth. And I honestly cannot think of any other way in which Otepka could have handled the matter.

I doubt very much, for example, that he would have been granted permission to convey these documents to the subcommittee if he had asked his superior, Mr. Reilly, for this permission.

Here was this poor man, put in the position of being accused of having lied to the Committee on the Judiciary when he told us that he had written a memorandum to his superior, and the superior came before us and said, "He is a liar; he never did."

Faced with this charge, Otepka said, "All right, I will show you I am not a liar. Let me get that paper."

He went back to his office, got the paper, and returned, and said, "Here is the memorandum I wrote him; there are his initials. And here is his memorandum. Here they are."

Mr. EASTLAND. Mr. President, will the Senator yield?

Mr. DODD. I yield.

Mr. EASTLAND. Is it not a fact that Mr. Otepka was told there was a conflict, and asked to verify, if he could, the story he told?

Mr. DODD. That is exactly right.

Mr. EASTLAND. And he did, at the request of the committee, verify it?

Mr. DODD. He did.

Mr. EASTLAND. And then the State Department fired his superiors for lying.

Mr. DODD. That is correct. I am glad the Senator added that; I meant to mention it.

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This was another reason why the Secretary of State fired Reilly, because he lied about those memorandums before the Committee on the Judiciary.

Senators may say Otepka should have gone to the Secretary of State and said, "Look, this fellow Reilly went up to the Judiciary Committee and lied about me; please let me have that memorandum so I can take it to the committee and show it to them."

If he had done that, it perhaps might have been better and easier. Knowing the machinery of these big departments, I doubt that he would have gotten permission. On the whole I am convinced that Otepka did the right thing.

Mr. MURPHY. Mr. President, will the Senator yield for a question?

Mr. DODD. I yield.

Mr. MURPHY. I seem to recall having read, in connection with some controversy involving the name Reilly, that there was a question about tapping telephones.

Mr. DODD. Yes.

Mr. MURPHY. And that there was testimony that this had taken place under oath, which later proved to be false testimony.

Mr. DODD. Yes.

Mr. MURPHY. Was that the same Mr. Reilly who seems to have been involved with this matter?

Mr. DODD. Yes.

Mr. MURPHY. And he did, under oath, deny that he had any knowledge or had anything to do with tapping Otepka's phone; is that right?

Mr. DODD. Yes; he denied all that.

Mr. MURPHY. Then later, it was subsequently proved, and he admitted, that his testimony under oath had been false?

Mr. DODD. That is right. He was the same person. The Senator has identified him correctly.

Mr. MURPHY. I thank my distinguished colleague.

Mr. DODD. Otepka had also recommended to the Department of State that, in order to reduce paperwork and simplify security procedures, a very much abbreviated report form be used in the case of those employees whose background revealed no questionable or adverse information requiring further evaluation. In order to demonstrate what he meant, Otepka provided the subcommittee with a sample copy of this abbreviated report form.

Now in a purely technical sense, Otepka in this case may have been guilty of violating the Executive order dealing with personnel security files. But the real purpose of this order was to protect employees of the executive branch against the disclosure of any adverse or unevaluated information that might be contained in their personal files. And the report in question contained not a single iota of adverse information; it was a record, indeed, without a blemish of any kind.

Incidentally, I heard the Senator from Missouri (Mr. EAGLETON) say there were 34 classified documents involved. He seemed to be under the impression that Otepka had turned over to the committee 34 documents that he had no right to turn over. I do not know where the Sen-

ator got that impression, except that I suspect he probably read portions of the evidence and of the hearing exhibits without knowing all the facts.

There were, it is true, some routine documents under his control that Otepka turned over to the committee upon request. But there were only three documents involved in any charges preferred against Otepka, and I have told you about them.

The original charges did start out with a lot of other junk, but it never got anywhere, and the Secretary of State dropped these charges and they ended there.

So much for the charges brought against Otto Otepka by the Department of State. These charges held no water. Nor did they really succeed in persuading the press or the public. Nevertheless, as the result of the flimsy and baseless charges that were brought against him, Otto Otepka was subjected to a harrowing five-and-a-half-year ordeal.

From all those in the press who followed his case carefully, Otepka won very high marks for the manner in which he bore himself in the face of his long ordeal. Pulitzer Prize-winning newspaperman, Clark Mollenhoff, for example, said recently in a speech in Washington:

Every investigation I made of Otepka's story demonstrated that he was accurate on the facts, and balanced in his perspective * * * he was amazingly objective in viewing his own case, had in judgment about the men who were aligned against him. He had the restraint and judgment to draw lines between those who were actively engaged in illegal and improper efforts and those who seemed to be simply trapped into a position by carelessness or to present a united political front.

Since the charges which led to Otepka's harassment and punishment by the State Department were clearly without substance, Drew Pearson and the others who have recently assailed him have had to invent new charges to bolster the old ones.

Among other things, they have charged him with lack of qualification, with unbalanced judgment, and with extremist associations. Drew Pearson has even implied at several points that Otto Otepka is anti-Semitic.

Let me reply to these recently manufactured charges briefly, because they clearly do not merit extensive attention.

OTEPKA'S FAIRNESS

Otto Otepka had a reputation for fairness which in the 1950's won him the implicit, if not explicit, praise of certain of those who today attack him.

I recall specifically the case of Wolf Ladejinsky, an expert on agriculture in the underdeveloped countries, who had been denied clearance by the Department of Agriculture but who was then granted clearance by the Department of State on the basis of the recommendation of Otto Otepka. This conflict in clearances took more than a year to resolve, and during that time the Ladejinsky case became a nationwide cause with the liberal press and with liberals generally.

Ladejinsky's foremost defender in the press was Washington correspondent

Clark Mollenhoff. For his writings on the Ladejinsky case, Mr. Mollenhoff received a special award from the American Civil Liberties Union, as well as the Heywood Broun Award of the American Newspaper Guild and several other press awards. But the real hero of the Ladejinsky case, even though his name received scant attention at the time, was Otto Otepka, and Mr. Mollenhoff is the first to confirm this.

Pearson and others who today assail Otepka would do well to reread the editorials on the Ladejinsky case that appeared in the liberal press of the time.

As for the innuendo that Otto Otepka is anti-Semitic, Pearson conveniently forgot that Wolf Ladejinsky was Jewish. There were, indeed, anti-Semitic overtones in the attack conducted against Wolf Ladejinsky. And in defending Wolf Ladejinsky, Otto Otepka also gave battle to the hidden anti-Semitism which almost succeeded in destroying Ladejinsky.

In defending Ladejinsky, Otepka demonstrated, as well, a sensitivity and fairness that other security officers would do well to emulate.

In the period before the recognition of the Soviet Union, Ladejinsky had been an employee of the American office of Amtorg, the Soviet trading organization. In the eyes of the security officers in the Department of Agriculture, this single fact was enough to disqualify Ladejinsky. Unquestionably, it was a fact which had to be carefully weighed. But Otepka took the stand that it was necessary to look at Ladejinsky's record whole and that it would be wrong to disqualify him because of a single association that had been terminated some 25 years previously.

The basic fairness which he manifested in the Ladejinsky case characterized Otepka's entire approach to problems in the delicate field of personnel security.

THE LIBERTY LOBBY, THE JOHN BIRCH SOCIETY
AND GUILT BY ASSOCIATION

Another charge that Pearson has been riding hard is that Otepka has actively associated with the Liberty Lobby and the John Birch Society and that these two organizations played the principal role in promoting his appointment to the Subversive Activities Control Board.

Nothing could be further from the truth. The fact is that these two far-right organizations were unhappy about Otepka's appointment to the Subversive Activities Control Board. They preferred to have Otepka as a martyr whose name they could exploit for their own right-wing purposes rather than seeing Otepka vindicated through his appointment to the Subversive Activities Control Board by President Nixon.

As for Pearson's charge that the nomination was made because the Liberty Lobby and the John Birch Society have a long list of Congressmen whom they can manipulate because they are in their debt, I cannot think of any two organizations that have less influence on the Hill than these two misguided ultra rightist associations. I am sure on this point the opinion of the Senate would be just about unanimous.

It is probable that among Otepka's countless thousands of supporters across the country there were some members of the John Birch Society and the Liberty Lobby, who supported him because they considered him an anti-Communist.

But this is a problem that exists for liberals and pacifists as well as for those who take a strong stand against Communism.

It is, for example, a matter of record that the Communist Party and its publications in this country strongly oppose our Vietnam commitment.

It is also demonstrable that the Communist Party has participated and has urged its members to participate in and contribute to the various major anti-Vietnam demonstrations that have taken place.

But it would clearly be ridiculous to argue or imply that because all Communists oppose our Vietnam commitment or because identified Communists have played key roles in the anti-Vietnam movement, all those who oppose our Vietnam commitment are Communists or pro-Communists.

The fact is that those who are anti-Communist, whether their domestic views are liberal or conservative, will frequently attract the support of elements with whom they have no association and for whom they have no esteem.

Similarly, the fact is that those who oppose our Vietnam commitment or oppose the ABM, whether their domestic views are liberal or conservative, will frequently find their views enthusiastically supported by the Moscow Communists and the Peking Communists and all the various New Left organizations.

WHO SUPPORTS OTEPKA?

To the extent that Otepka had serious political support, it was based primarily on reputable organizations, like the American Legion which passed resolutions on his behalf at two national conventions; the Young Republican organization; the League of Republican Women; and, on the issue of procedure, by the American Civil Liberties Union which issued a statement protesting the State Department's refusal to grant him an open hearing.

Otepka has been supported, as well, by numerous Senators and Congressmen of both parties.

Finally, his cause has been championed by editorialists, columnists, and commentators of various political views; Clark Mollenhoff of Cowles Publications; Willard Edwards of the Chicago Tribune; commentator Ron David of station WTOP; columnist Holmes Alexander; and numerous editors, including the editors of the New York Daily News; Charleston, S.C., News & Courier; Buffalo, N.Y., News; St. Petersburg, Fla., Times; Omaha, Nebr., World Herald; Los Angeles Times; Phoenix, Ariz., Republic; and St. Louis Globe Democrat.

It is patently ridiculous to charge, in the light of this record, that Otto Otepka has derived his chief support, or any significant portion of this support, from the Liberty Lobby and the John Birch Society.

THE CONFIRMATION OF OTTO OTEPKA

Mr. President, the bureaucratic procedures of the Department of State have wrought a terrible injustice in the case of Otto Otepka.

The State Department bureaucracy cannot go back on itself, because such a reversal would run counter to the nature of bureaucracy.

But the Congress of the United States does not have to be guided by bureaucratic considerations or by the past mistakes of the State Department.

The President has done the right thing in nominating Otto Otepka for the Subversive Activities Control Board, first, because it was clear that his reinstatement in the Department of State was a bureaucratic impossibility; second, because it was clear that an injustice had been done and that vindication was called for; and third, because Otepka was highly qualified for the post.

The newly manufactured charges that have been brought against Otepka by Drew Pearson and others are even more baseless than the original charges brought against Otepka by the Department of State. Even to call them "charges" dignifies them, for they are blatant examples of the technique of the big lie and of guilt by association.

Otto Otepka has for several decades served his Government with distinction in a series of important positions.

The post for which he has been recommended is a highly responsible one.

It calls for a broad knowledge of the problems posed by subversive activities and by the requirements of security.

But most important, it calls for integrity, fairness, and a capacity for balanced judgment.

All of these qualifications Otto Otepka possesses in exceptional degree.

Mr. President, I earnestly hope that the Senate will vote overwhelmingly to approve the confirmation of Otto Otepka as a member of the Subversive Activities Control Board.

Mr. FANNIN. Mr. President, I should like to speak further on the Otepka case, and furnish documentation on the facts.

The Otepka case began in 1961. Up to that time Otto Otepka had been considered an outstanding professional security officer. He had come to the State Department in 1953 as a personnel security evaluator. In 1958 he had received a meritorious award signed by Secretary of State Dulles. In 1960 his State Department efficiency report noted:

Long experience with and extremely broad knowledge of laws, regulations . . . in the field of personnel security. He is knowledgeable of communism and its subversive efforts in the United States. To this he adds perspective, balance and good judgement.

Mr. President this was the record of Otto Otepka, valued career officer in the State Department before the time he was asked to see that certain individuals be allowed to obtain important jobs without proper security clearance. By early 1962 there were 152 security "waivers" granted to high-ranking Department personnel. Under the previous 8 years of the Eisenhower administration, only five such waivers had been granted.

In January 1962, Otepka was downgraded from Deputy Director of the Office of Security to Chief of the Evaluation Division. On June 27, 1963, he was locked out of his office, denied access to his files and placed in isolation. He also learned that his telephone had been tapped. Three of the officials who denied knowledge of this tape later reversed themselves before the Senate Internal Security Subcommittee. Mr. President, I ask unanimous consent that an Associated Press story appearing in the New York Times on January 10, 1968, be printed at the conclusion of my remarks as exhibit 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FANNIN. This story, Mr. President, notes the Senate Internal Security Subcommittee has accused the State Department of dealing mildly with these three officials: John Reilly, former Deputy Assistant Secretary for Security; Elmer D. Hill, former head of the Division of Technical Services in Mr. Reilly's office; and David I. Belisle, then Mr. Reilly's Special Assistant.

It should be noted, Mr. President, that initially the State Department leveled 13 charges against Mr. Otepka. By the time of the Department hearings, 10 of the 13 charges had been dropped. By taking this action, the Department managed to prevent a probe of several prominent figures, including those who may have played a significant role in trying to force Otepka out of his job.

What was Otepka's crime, Mr. President? After more than 1,000 pages of testimony, Mr. Otepka was found guilty of "delivering two memorandums and an investigative report to a person outside of the Department of State and in violation of the Presidential directive of March 1948."

This conclusion was reached, Mr. President, without noting that these items were delivered to a duly authorized congressional committee for the purpose of proving that he had not lied in disputing the statements made by his superiors.

Mr. Otepka's "crime," Mr. President, is that he refused to rubberstamp security clearances requested by the administration in power at that time. Clearly a full investigation of the whole handling of the Otepka affair would have proved embarrassing in the extreme for many highly placed personalities. Even now, were all the facts brought to light, there would be political repercussions of considerable significance and magnitude.

Mr. President, I suggest that the opposition to the current nomination of Otto Otepka to the Subversive Activities Control Board is, for the most part, a fabrication of innuendoes and unproven statements pushed forward by those who are either willingly or unconsciously unaware of the real issues in this case.

The Otto Otepka case, Mr. President is more than the trials of one man. It is a question of whether a dedicated career civil servant is free to do his job relating to the security and well-being of our Nation; it stands as a symbol to other dedicated men and women in the service of

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their country, demonstrating that America wants the job done and wants the job done right in protecting and preserving our Nation.

Mr. President, I ask unanimous consent that an editorial from the Tucson Daily Citizen, Tucson, Ariz., appearing on February 5, 1968, along with the text of the brief in behalf of Otto Otepka filed with State Department hearing officer, Edward A. Dragon, be printed at the conclusion of my remarks as exhibits No. 2 and No. 3.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 2 and 3.)

EXHIBIT 1

[From the New York Times, Jan. 10, 1968]

PENALTIES IN THE BUGGING OF OTEPKA ARE ASSAILED—SENATE PANEL SCORES SOFT TREATMENT OF THREE WHO ALLEGEDLY PLANTED DEVICE

WASHINGTON, January 9.—The Senate Internal Security Subcommittee has accused the State Department of dealing mildly with three of its officials who allegedly bugged the office phone of Otto F. Otepka, the department's demoted security chief.

The subcommittee said in a report released today that the department "allowed two witnesses who had led to the subcommittee to resign with no prejudicial material in their personnel files to prevent further Government employment, and it retained in its employment one of the trio on its payroll."

Mr. Otepka was demoted, reprimanded and reassigned for having furnished the subcommittee's counsel, J. G. Sourwine, with classified material in 1963. He appealed to the Civil Service Commission after Secretary of State Dean Rusk decided the case last December.

The subcommittee said that, because of the "soft treatment" of the three employees, "the impression has inevitably been created—and only the State Department can undo this impression—that it regards perjury before a committee of Congress as a quite minor matter."

The State Department had no comment.

The three officials were John Reilly, former deputy assistant secretary for security; Elmer D. Hill, former head of the division of technical services in Mr. Reilly's office; and David I. Belisle, then Mr. Reilly's special assistant.

The subcommittee said Mr. Reilly and Mr. Hill first denied but later admitted that they had installed a listening device in Mr. Otepka's office. Mr. Belisle, who was out of the country when the bug was installed, denied any knowledge of it, but later said he was told about it after his return, the report added.

Mr. Reilly and Mr. Hill were first suspended, then both retired. Mr. Belisle did not resign and is now an administrative officer at the United States Embassy in Bonn.

EXHIBIT 2

[From the Tucson Daily Citizen, Feb. 5, 1968]

WHY THE ATTACK ON OTTO OTEPKA?

The case of Otto Otepka shows that subversive elements are at work within the government of the United States, particularly within the state department.

Mr. Otepka is a persecuted patriot, hounded by ultra-leftists who correctly recognized him as an obstacle to their plans for America.

Until 1961, he was working chief of the

state department's world-wide Office of Security. It was his job to issue security clearances for persons going into important government positions. As a loyal American, Mr. Otepka regularly refused security clearance to anyone who failed to meet the test of Executive Order 10450.

That order, issued by President Eisenhower in 1953, specified that any reasonable doubt regarding a government employee's or applicant's loyalty should be resolved in favor of national security rather than in favor of the individual.

Shortly after the national election of 1960, in which John F. Kennedy won the presidency, Mr. Otepka explained his position to incoming Secretary of State Dean Rusk and incoming Attorney General Robert F. Kennedy. The two newly appointed cabinet members asked Mr. Otepka about the possibility of security clearance for Walt W. Rostow, who is now a special assistant and advisor to the President and holds what Mr. Johnson calls "the most important job in the White House, aside from the President."

Mr. Otepka had refused clearances for Mr. Rostow in 1955 and 1957. And in 1960, he explained to Mr. Rusk and Mr. Kennedy that he would still not grant such a clearance.

In 1961, the State Department shunted Mr. Otepka out of his accustomed duties by putting him in charge of a special project in an entirely different area. At that same time, the department's security clearance procedures became lax.

In November, 1961, Mr. Otepka was demoted to chief of the evaluations division, an office he filled years earlier, in an apparent effort to make him resign in disgust. He hung on.

On June 27, 1963, Mr. Otepka was summarily dismissed from the State Department and the FBI was asked to investigate him for possible violation of the espionage laws. Incredibly, this action was based on his having given information to the Senate Internal Security Subcommittee.

In the meantime, that subcommittee had been investigating the now-notorious Otepka case and the State Department procedures which the New York Times had called "deceitful, and worse."

The committee's report came out last month in four volumes totalling 409 pages, and it amounted to a vigorous defense of Mr. Otepka and seven other security officers who were victims along with him of the State Department purge of 1963.

That report, however, fails to explain why Mr. Otepka was persecuted. What motivated his enemies? Senate Minority Leader Everett Dirksen answered that question a year ago when he said:

"Why, it is perfectly obvious what their motivation was. The ultra-leftists in the Department of State saw Otepka as an obstacle to their plans. They had to remove him—and they did."

Those plans include disarmament treaties, limitations on American development of strategic space weapons, "bridges" to the Soviet Bloc and other so-called "one-world" schemes.

Mr. Otepka no doubt was an obstacle because he was not about to give security clearance to anyone with a record of subversive affiliations. And America was safer so long as that authority was his.

Americans should demand another purge in the State Department, a purge directed this time against ultra-leftists rather than patriots.

EXHIBIT 3

FULL TEXT OF THE OTEPKA BRIEF

(NOTE.—The following is the complete text¹ of the official brief in behalf of Otto Otepka filed with Edward A. Dragon, the hearing officer who presided over Otepka's State Department appeal. This brief, was submitted by Otepka's attorney, Roger Robb, a partner in the Washington, D.C., law firm of Robb, Porter, Kistler and Parkinson. The circumstances leading up to the filing of the brief and the events that have transpired since are summarized in the preceding two pages of this special supplement.)

This is an appeal from the decision of Mr. John Ordway, chief, Personnel Operations Division, sustaining 13 charges against the appellant. The charges were preferred by a letter from Mr. Ordway to the appellant dated Sept. 23, 1963. The appellant filed his answer Oct. 14, 1963. By letter dated Nov. 5, 1963, Mr. Ordway found that all 13 charges contained in his letter of Sept. 23, 1963, were sustained. Mr. Otepka appealed from this decision on Nov. 14, 1963.

Mr. Ordway's letter of Sept. 23, 1963, setting out the charges against Mr. Otepka, recites in some detail that during the period March 13, 1963, the appellant's classified trash bag, referred to as a "burn bag," was subjected to continuous and covert inspection; that these "procedures" were "instituted" by direction of Mr. Otepka's superior, John F. Reilly, deputy assistant secretary for security. The letter further recites that certain carbon paper, copies, "clipped" and torn pieces of paper, referred to in the charges, were retrieved from the trash bag.

Following his description of the surveillance of the appellant's trash bag Mr. Ordway lists 13 charges against the appellant. Charges 1, 2 and 3 allege that the appellant conducted himself "in a manner unbecoming an officer of the Department of State" and committed a "breach of the standard of conduct expected of an officer of the Department of State," by furnishing copies of two memoranda and a copy of an investigative report to Mr. J. G. Sourwine, chief counsel, United States Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, of the Committee on the Judiciary. It is alleged that the furnishing of these papers was in violation of the Presidential Directive of March 13, 1948,

"MUTILATION" CHARGE

Charges 4, 6, 8 and 10 allege that the appellant was "responsible" for the declassification of classified documents, in violation of various sections of the department's Foreign Affairs Manual. Charges 5, 7, 9 and 11 relate to the same documents referred

¹ The text of the brief as here reprinted is exactly as in the original submitted to the hearing officer except that most parenthetical page references to other legal transcripts, appendices and exhibits have been removed, long paragraphs in the original have been subdivided into smaller paragraphs for easier reading, subheads have been inserted to break up the lengthy text. * * * The direct quotations in the brief come from testimony presented before the Senate Internal Security Subcommittee or at the State Department hearing; those interested in checking the references should consult the annotated text of the brief that was inserted in the Congressional Record by Rep. John Ashbrook (R.-Ohio) on Dec. 14, 1967.

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to in charges 4, 6, 8 and 10 and allege that the appellant was "responsible" for the "mutilation" of such documents in violation of 18 U.S.C. 2071, a criminal statute.

On Oct. 4, 1963, counsel for Mr. Otepka requested Mr. Ordway to advise him whether it was alleged that Mr. Otepka personally clipped or mutilated the documents in question, and if not then who was alleged to have done the clipping or mutilation. On Oct. 8, 1963, Mr. Ordway responded that it was not alleged that Mr. Otepka personally clipped or mutilated the documents. Mr. Ordway did not answer the question as to the identity of the person alleged to have done the clipping or mutilation.

Charges 12 and 13, contained in Mr. Ordway's letter of Sept. 23, 1963, allege that Mr. Otepka conducted himself "in a manner unbecoming an officer of the Department of State" by furnishing to Mr. J. G. Sourwine certain questions which were subsequently put by Mr. Sourwine to Mr. Otepka's superiors, John F. Reilly and David I. Bellisle, when they appeared before the Senate Internal Security subcommittee. It is alleged that the furnishing of such questions was "a breach of the standard of conduct expected of an officer of the Department of State."

By his letter of Oct. 4, 1963, counsel for Mr. Otepka requested Mr. Ordway to specify the regulation alleged to have been violated by such conduct of Mr. Otepka. Mr. Ordway responded by his letter of Oct. 8, 1963, that no allegation was made that such conduct violated a specific Department of State regulation.

Notwithstanding the decision of Mr. Ordway on Nov. 5, 1963, that all 13 charges against the appellant were sustained, the Department of State at the outset of the hearing on June 6, 1967 withdrew charges 4 to 13 inclusive. The hearing therefore related only to charges 1, 2 and 3 alleging that the appellant furnished certain documents to Mr. Sourwine, chief counsel of the Senate Internal Security subcommittee.

Each of the first three charges contains three elements, all of which must be proven if the charges are to be sustained. These elements are:

(1) That Mr. Otepka gave a certain classified document to Mr. Sourwine, the chief counsel of the Internal Security subcommittee of the Committee on the Judiciary of the United States Senate;

(2) That the giving of this document was a violation of the Presidential Directive dated March 13, 1948; and

(3) That this act by Mr. Otepka was conducted "unbecoming an officer of the Department of State" and "a breach of the standard of conduct expected of an officer of the Department of State."

The position of the appellant with respect to the issues posed by the first three charges was stated by his counsel in an opening statement to the Hearing Officer. Briefly, that position was and is:

(1) Mr. Otepka did in fact turn over the papers in question to Mr. Sourwine, who was acting in his official capacity as chief counsel of the Senate subcommittee.

(2) The papers given to Mr. Sourwine are not within the scope of the Presidential Directive of March 13, 1948, fairly and reasonably construed in the circumstances of this case. The papers contained information in the public domain, they did not contain loyalty or security information in the proper sense of that term, and there was no loyalty case pending or contemplated against any of the persons involved.

(3) In the circumstances of this case Mr. Otepka was under a duty to produce the specified papers as part of his testimony before the Senate committee. He was called as a witness in connection with certain testimony that had been given to the com-

mittee by his superior, John F. Reilly. He was asked whether that testimony was true or false. He said it was false, as in fact it was. In these circumstances it was his duty, imposed by his oath to tell the whole truth, to make a full disclosure to the committee, including production of the relevant documents. To the extent that Mr. Otepka failed to make a full disclosure and failed to produce the relevant documents, he would have condoned or shielded false testimony.

(4) The fact that the specified papers were classified "Confidential" or "Official Use Only" is immaterial, since Mr. Sourwine and the members of the Senate committee were authorized to receive such documents.

"GET OTEPKA" GROUP

(5) Any attempt by Mr. Otepka to bring the matter of Mr. Reilly's false testimony to the attention of his superiors in the Department of State would have been a vain and futile thing, and could only have resulted in suppression of the truth, for the reason that there was afoot in the State Department at that time, and there had been afoot for a long time previously, a well-organized conspiracy conceived, encouraged and led by Mr. Otepka's superiors, to destroy Otepka. The motivation behind this scheme to get rid of Otepka was that he constantly and resolutely insisted that sound and proper security practices be observed in the Department of State, whereas his superiors constantly endeavored to relax or bypass security restrictions or standards to the end that persons reasonably considered by Otepka to be of dubious character might be retained or appointed.

(6) With respect to the question of what constitutes "a manner unbecoming an officer of the Department of State" and what is "the standard of conduct expected of an officer of the Department of State," the position of the appellant was that the answer to this question is not to be found in any written definition, formula, or regulation, nor is it contained in the Presidential Directive of March 13, 1948. The answer must be derived from an examination and study of the patterns of conduct which in the past have been approved or disapproved by the Department of State, thereby establishing the mores or standards of the department. The conduct of Mr. Otepka must be judged against the standard so established to determine whether or not it falls below accepted standards, or is in violation of any such standards. Judged against such standards, the conduct of Mr. Otepka clearly does not fall below the standard and pattern which have been approved and accepted by the department in the past, and it is not a breach of any such standard.

The purpose of these charges is to liquidate Mr. Otepka, not because his conduct has been dishonorable, not because his conduct has been below the standards which should be expected of an officer of the Department of State, but solely because he has insisted upon the observance of proper security practices and standards, and because he has testified truthfully before a Senate committee.

This brief will examine the evidence developed at the hearing and set out the facts established thereby with respect to the foregoing issues. In accordance with the understanding reached at the conclusion of the hearing, matters of law will not be argued or discussed.

THE EXCELLENT RECORD OF OTTO F. OTEPKA

The reputation of Mr. Otepka for personal integrity is very high, and he "is regarded in his profession as one of the very best security men in the government, one of the most experienced, one of the most able" (Sourwine). His reputation and standing were attested by many witnesses who appeared before the Senate Internal Security subcommittee.

As for the testimony of Mr. Otepka before that committee, Mr. Sourwine stated, "Mr. Otepka's testimony had been very lengthy. And we have checked many, many things he has told us, and we have established, so far as we know, everything he told us was true."

Mr. Otepka was born May 6, 1915, and entered the federal service on July 1, 1936, as an assistant messenger in the Farm Credit Administration. In July 1942 he was appointed an investigator with the United States Civil Service Commission. He was employed by the Civil Service Commission as an investigator or as a personnel security specialist until June 1953, except for the period October 1943 until March 1946, when he served in the United States Navy as a personnel classification specialist.

On June 15, 1953, he transferred to the Department of State as a personnel security evaluator at the GS-13 level, in the Office of Security. On Oct. 25, 1954, he was promoted to chief of the Division of Evaluations in the Office of Security. On June 19, 1955, he was promoted to the GS-15 level, and on April 7, 1957, he was promoted to deputy director, Office of Security.

He served in this capacity until Jan. 21, 1962, when his position was abolished by a reduction in force and he was reassigned to the position he formerly held as chief of evaluations.

In 1942 and 1943 (excluding military service) Mr. Otepka's efficiency ratings as an employee of the Civil Service Commission were "Very Good," which was next to the highest rating that could be assigned. From 1946, when he returned from military service, until 1953, he received ratings of "Excellent," which was the highest attainable rating at that time.

During the period of Mr. Otepka's employment as an officer of the Department of State his performance ratings have been uniformly high and complimentary. Thus, for the period December 1953-December 1954, his supervisor's "narrative appraisal of overall work performance" reads as follows:

"During the entire rating period officer has been chief of the Evaluations Division. In that capacity he has done an extraordinary job shaping a chaotic situation into an orderly, efficient and effective operation. He has displayed a high degree of administrative skill, an encyclopedic knowledge of pertinent rules, procedures and regulations, and a profound understanding of the history and background of subversive organizations and influence. He is gifted with the temperament, the judicial mind, and judgment which have contributed immeasurably to the thorough, objective and fair evaluations which have raised the production of his division to the highest professional standards. He is himself a drafting officer of unusual skill. His enthusiasm, willingness to give unstintingly of his time and effort, and his wholehearted cooperation have earned the respect of his superiors and subordinates alike and he has well earned a rating in the upper level of satisfactory."

"EXCEPTIONAL ABILITY"

For the period December 1954-December 1955, his supervisor's narrative appraisal of the Evaluation Division stated:

"Mr. Otepka has continued during this rating period to demonstrate exceptional ability in fulfilling the above work requirements. He has handled in an extraordinary manner cases of a highly complex and extremely sensitive nature and maintain excellent liaison relations with other areas in the department as well as other government agencies. His superior leadership enables such flexibility as to program the activities of his office to permit the expeditious liquidation of the normal workload as well as special projects assigned by higher officials within the time limitations established. He should be rated outstanding with regard to

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all aspects of his job requirements; however, since the established time schedule for the submission of an outstanding rating precludes the presentation of this rating, as outstanding the incumbent, is being rated in the highest level with the satisfactory category."

For the period December 1955-December 1966, Mr. Otepka's supervisor recommended that his work as chief of the Evaluations Division be rated as "Outstanding." The justification for this rating stated in part:

"The subject during the rating period performed every aspect of the work requirements set forth in his job description in a superior and exemplary fashion. He has shown himself consistently to be capable of sound independent judgment, creative work, and the acceptance of unusual responsibility. His attitude, sustained effort and willingness to put the needs of the office and the department before personnel preference or convenience have set an example and provided an incentive to his subordinates and coworkers in the division and throughout the office.

"During the last several years the incumbent has directed the completion of the department's program for the re-evaluation of all employees of the department and American personnel of the foreign service under the standard as set forth in Executive Order 10450. In this effort he personally completed a large number of evaluations on difficult or controversial cases, which have been recognized as outstanding examples of professional skill in the field of personnel security evaluations. This crucial effort, which is the foundation for today's personnel security program within the department and the foreign service had to be completed by a target date established by the White House.

"In achieving this monumental task of reviewing and revalidating security clearances for thousands of employees, Mr. Otepka demonstrated exceptional executive ability in directing, training, and evaluating subordinate personnel and in other factors of managerial skill which contributed to the creation of a productive and efficient organization.

"From its inception, the Federal Employees Security Program has been a controversial issue. Its objectives have been widely misunderstood and misinterpreted in addition to the handicaps of inexperienced assistants, paucity of standards, and shortage of time, Mr. Otepka was obliged to combat these misunderstandings and misinterpretations. This he accomplished as a result of his ability to interpret and apply security laws, and orders in a 'down-to-earth' level-headed manner, thereby avoiding much of the adverse publicity and contention which was associated with similar programs in other federal agencies.

"Other assignments of the officer which were completed during the period under review and which were of importance both to the department and to the internal security of the United States are of such a nature as to preclude for security reasons their inclusion and discussion in this record. Mr. Otepka has approached each of these assignments in the same reasonable manner and in each instance has concluded them in a manner that reflected credit upon the Department of State.

"His knowledge and experience of the entire security field resulted in his designation as the department's representative on the Subcommittee for Protection of Classified Government Data, Interdepartmental Committee on Internal Security. He has also served as the department's alternative representative on an ad hoc high-level, interdepartmental special committee studying communications intelligence security standards and practices.

"His services as a 'staff' adviser and assistant to the director of the Office of Security,

the administrator of the Bureau of Security and Consular Affairs and to secretarial-level officers of the department can be categorized as truly indispensable. Mr. Otepka is a recognized authority within the government on rules, regulations and procedures affecting every phase of the federal personnel security program. He is a veritable encyclopedia of knowledge on communism and other opposing ideologies. He has above-average drafting ability with an unusual facility with words aided by a logical and trained legal mind.

"Mr. Otepka has prepared many of the communications and reports for the secretary, the under secretary or the deputy under secretary for administration relating to persons suspended or separated from the department or the foreign service under provisions of EO 10450. The same is true in connection with investigations made by Congress from time to time of the department's security program either specifically or as a part of a broader study.

"Mr. Otepka's understanding of the numerous and highly complex directives applicable to personnel security and his ability to interpret them practically and realistically has prevented his superior officers from stumbling into security administration pitfalls. He has sense for detecting danger points and bringing these to the attention of the appropriate senior officials with positive recommendations as to how they can be avoided.

"His persistent exposition of the difference between 'security' and 'suitability' risks, for example, has enabled the department to steer clear of the adverse publicity and embarrassment resulting from improperly reporting personnel security action to the Civil Service Commission and the subsequently attendant 'security numbers game' fiasco. For this, he has been cited by the administrator of SCA—Mr. McLeod, in his testimony before appropriation committees of Congress (Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives, 83rd Congress, Second Session).

"The improved relationships which the department has enjoyed with the Congress on matters relating to personnel security during the past year or two are due in no small part to the outstanding staff work done by Mr. Otepka in compiling and presenting full and complete information to the interested committees and individuals concerned" (emphasis supplied).

AWARD FROM DULLES

On June 19, 1957, the Performance Rating Committee, after considering the recommendation for an "Outstanding" rating for Mr. Otepka, decided that because of the "very stringent and limiting" criteria for an "Outstanding" rating Mr. Otepka's performance should be rated as "Satisfactory." In lieu of the "Outstanding" rating, for which he was recommended, Mr. Otepka received a Meritorious Service Award from the secretary of state, John Foster Dulles. This award, dated April 2, 1958 and signed by Mr. Dulles read as follows:

"Department of State, United States of America, Meritorious Service Award. Otto F. Otepka. For meritorious service, loyalty and devotion to duty as chief, Evaluations Division, Office of Security. Outstanding display of sound judgment, creative work and acceptance of unusual responsibilities, has reflected great credit on himself and the department and has served as an incentive to his colleagues."

For the period December 1956-1957, Mr. E. Tomlin Bailey, director of the Office of Security, submitted the following appraisal of Mr. Otepka's performance as deputy director:

"Mr. Otepka moved into his present position about the middle of April 1957. He has been constantly called upon by me for advice and recommendations, drawing upon his

exceptional security background and high ability. During the whole period that he has served as deputy director we have had a shortage of senior personnel. This has required an unusual amount of detail work by him and placed upon him a primary burden in connection with the inspection of the Division of Evaluations by the foreign service inspectors. The inspectors and I relied upon him far more than anyone would ordinarily expect because of his knowledge of how its duties fitted into the other work of the office. In recent weeks, he has devoted his major effort to the study of the department's probably most celebrated security case. This has required a full application of his legal training as well as the characteristics already mentioned."

For the period December 1957-1958 Mr. Bailey filed the following appraisal of Mr. Otepka's performance as deputy director: "I depend very heavily upon Mr. Otepka for substituting for me and advice. His long experience in the personnel security field places him among the top operating officials in this field in all of government. Much of his effort in the past year has been in the study and evaluation of the most difficult personnel case we have had in my experience, one which has been complicated from the points of view of both law and equity because of procedural errors and lack of action over the past 13 years.

"In spite of the demands of this case, Mr. Otepka has taken upon his shoulders an increased share of the operating responsibilities over these he carried at the beginning of the rating period. In addition, he has continued to serve successfully as the department's representative on an interdepartmental working committee on the application of EO 10501, the basic document providing for the protection of information by classification procedures, proper storage, controlled transmission and release."

(The "most difficult personnel case" referred to by Mr. Bailey was the case of John Stewart Service.)

For the period June 18, 1959-Sept. 30, 1960, Mr. William O. Boswell, director, Office of Security, filed the following appraisal of Mr. Otepka's performance as deputy director and acting director during Mr. Boswell's absence:

"Security being a new field for me, I have relied heavily on Mr. Otepka's advice and recommendations. He has had long experience with and has acquired an extremely broad knowledge of laws, regulations, rules, criteria and procedures in the field of personnel security. He is knowledgeable of communism and of its subversive efforts in the United States. To this he adds perspective, balance and good judgment, presenting his recommendations and decisions in clear, well-reasoned and meticulously drafted documents. "He has brought these attributes to bear during periods totalling almost four months when he has been acting director in my absence and throughout the rating period as the State Department representative on an intragovernmental committee concerned with security matters."

Mr. Otepka has received no performance ratings for the periods subsequent to the one ending Sept. 30, 1960. He attempted to secure such performance ratings by taking the matter up with his superiors, Mr. Boswell and Mr. Reilly, but without avail. Mr. Boswell subsequently testified before the Senate Internal Security subcommittee that he had made up his mind he was not going to give Mr. Otepka a performance rating unless he was directly ordered to do so by his superior, Mr. Crockett.

PATTERN OF HARASSMENT

On May 31, 1963, however, John F. Reilly, deputy assistant secretary for security, certified over his signature that Mr. Otepka's "work is of an acceptable level of com-

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petence," as a result of which Mr. Otepka was granted an administrative pay raise effective June 9, 1963.

In addition to the foregoing complimentary performance ratings and the meritorious service award received from the secretary of state, Mr. Otepka received other official commendations during the years 1955-1962.

A series of events, beginning as early as 1960, demonstrate that there was a design and purpose on the part of the appellant's superiors to "get rid of Otepka." Standing alone, none of these events would be conclusive; taken together, however, they establish a pattern fairly leading to the conclusion that Otepka's superiors at first undertook to diminish his influence and restrict his activities in security matters, and subsequently embarked upon a scheme to remove or purge him from the Department of State by a specious assignment, by harassment and by contrived charges of wrongdoing.

The events further reveal the motivation for this attack upon Otepka. Briefly stated, the motivation was that Otepka's insistence upon the observance of sound and proper security practice, and his proper refusal to approve the employment or retention of persons of dubious character and background, conflicted with the desires and policies of his superiors and of others in high places.

In October 1960 Mr. John W. Hanes Jr., administrator of the Bureau of Security and Consular Affairs and Mr. William O. Boswell, director, Office of Security, requested Otepka to undertake a special project, which was to bring up to date the personnel security files of all Department of State employees, correlating and bringing together in those files all pertinent and available personnel suitability and security information. It was estimated that this project would take two years to complete.

SPECIAL PROJECT

When he assigned Otepka to this project Mr. Boswell requested him to relinquish his position as deputy director in order that he might devote himself exclusively to the review of cases. Otepka declined to step down as deputy director.

Mr. Boswell stated at this time "that he disliked Scott McLeod and that he would take steps to eradicate the Scott McLeod image from the State Department." Otepka had served as a principal assistant to Scott McLeod. It appeared that Mr. Boswell, a Foreign Service officer, felt that during his term as administrator of the Bureau of Security and Consular Affairs, Mr. McLeod had damaged the morale and prestige of the Foreign Service.

By way of background to Mr. Boswell's aversion to the "Scott McLeod image" it should be noted that in 1956 Mr. Otepka, under McLeod's direction, prepared a comprehensive study to identify those cases of employees of the State Department on whom there had been developed a significant derogatory information of a security nature, either in the course of FBI investigations, or in the course of State Department investigations or investigations conducted by other agencies.

The study included 858 cases, together with a resume concerning each case. The information with respect to the individuals involved related principally to their sympathetic associations or affiliations with Communists or subversive organizations. Before action could be taken in the matter, however, "Mr. McLeod was appointed as ambassador to Ireland and the list and resumes were consigned to oblivion."

The prospectus for the Hanes-Boswell "special project," which Otepka submitted to Mr. Boswell in writing on May 8, 1961, referred to the 1956 list and resumes and proposed to use this material in connection with the new undertaking. The prospectus also pointed out that much personnel suita-

bility or security information and many relevant security and intelligence reports relating to personnel had not been assimilated into the personnel security files.

Further, it was emphasized that in many cases character deficiencies on the part of employees had developed after security clearances had been granted, but had not been reflected in the files. The prospectus also referred to the fact that in certain cases derogatory information respecting employees in the department or at Foreign Service posts had been treated by their superiors on a confidential basis and withheld from the file of the employee involved.

In May 1961 Mr. Otepka organized a staff to assist him in carrying out the "special project." The members of the staff were Raymond Loughton, Harry Hite, John R. Norpel, Francis Gardner, Billy Hughes, Edwin Burkhardt, plus three clerical employees including Mr. Otepka's secretary Eunice Powers.

As we shall see, however, the special project was abandoned by direction of Otepka's superiors in April or May 1963. On June 27, 1963, Mr. Norpel and Mr. Hughes were detailed from the Division of Evaluations to the Investigations Division and Mrs. Powers was transferred to a low-level clerical job. The other members of the team were also scattered.

KENNEDY AIDED

In October 1960 a group of government officials, appointed by President Eisenhower, known as the Sprague Committee and including Allen Dulles, George Allen, Gordon Gray and C. D. Jackson, conducted a survey of United States prestige abroad for the White House. Their report was classified "Secret." The contents of the report were "leaked" by someone in the State Department to the public relations director of the Kennedy campaign headquarters, and the information so obtained was published in the New York Times and the Washington Post.

Otepka participated in the investigation of this "leak" and the identification of those involved, resulting in the separation of the employee responsible for conveying the information to the Kennedy headquarters. Subsequent to January 1961 the public relations director who received this classified information from the State Department in an unauthorized manner, and presumably passed it on to the press, became the head of the executive secretariat in the office of the secretary of state.

In December 1960 Otepka was selected to meet with Secretary of State Designate Dean Rusk and Attorney General Designate Robert Kennedy. The meeting took place in the evening, after office hours, in Mr. Rusk's temporary office. No one except Mr. Rusk, Mr. Kennedy and Mr. Otepka was present.

ROSTOW APPOINTMENT

Mr. Rusk informed Otepka that the purpose of the meeting was to discuss with him, as the top professional security officer in the State Department, his views with respect to the requirements of the department's security office for the investigation, evaluation and clearance of presidential appointees to the department. Otepka responded that he "would insist on complete adherence to the rule established by the Senate Foreign Relations Committee in 1954, stating that all executive nominations referred to it at the rank of assistant secretary or higher would be approved only upon certification to the Foreign Relations Committee that the person had been given a current full field investigation by the FBI."

A "question was raised as to whether there would be a strict adherence to the requirements for pre-appointment investigation." Otepka "recommended against the use of the emergency clearance authority—that is, the waiver of pre-appointment investigations for officer personnel to be appointed to the department."

Having ascertained Otepka's general views Mr. Rusk informed him, at the December meeting, that the new Administration was considering the appointment of Walt Whitman Rostow to a key position in the department. He said he had gone over the substantive data in the file, which he had on his desk. Otepka was asked "what kind of security problem would be encountered regarding the appointment of Mr. Rostow to the department." Otepka responded that he was quite familiar with the file and Mr. Rusk accordingly asked for his views.

Otepka's familiarity with the file of Walt Whitman Rostow dated from 1955 when he evaluated Mr. Rostow as a prospective "key person" in a project to be undertaken under the auspices of the Operations Coordinating Board. The project was the formulation of psychological strategy in the Cold War. Persons employed on the project were required to have a security clearance under the strict standards prescribed by the United States Intelligence Board.

R.F.K.: "AIR FORCE JERKS"

As a part of his evaluation Otepka at this time reviewed the State Department file on Mr. Rostow, the CIA file and the results of reviews given to the case by both the CIA and the Department of the Air Force. The Air Force had previously made a security finding adverse to Mr. Rostow.

As a result of Otepka's findings, Under Secretary of State Herbert Hoover Jr., the chairman of the Operations Coordinating Board, decided that Mr. Rostow would not be utilized as an employee or consultant by the State Department in connection with the board's project. In other words, Mr. Rostow could not get the necessary clearance under the strict standards applicable to the Operations Coordinating Board.

Subsequently, in 1957, when Mr. Rostow was again recommended for employment in the State Department, Mr. Roderic O'Connor, administrator of the Bureau of Security and Consular Affairs, decided, on the basis of Otepka's 1955 summary, that Mr. Rostow was not desirable for employment. Mr. O'Connor's decision was predicated on the "political policies of the Administration."

After Otepka informed Mr. Rusk and Mr. Kennedy of the background of Mr. Rostow, Mr. Rusk made no comment, but Mr. Kennedy spoke disparagingly of the adverse finding that had been made by the Air Force. Specifically, Mr. Kennedy said "those Air Force guys are a bunch of jerks."

After the new Administration took office in 1961 Mr. Rostow was entered on the rolls of the White House, so that the State Department was not involved in his security clearance. He was investigated by the FBI in connection with his appointment to the White House. Subsequently he was transferred to the State Department. At present he is a special assistant to the President on National Security Affairs.

In September 1960 Charles Lyons was brought into the Division of Evaluations as deputy chief. Both Otepka and the then chief of the division, Mr. Emery J. Adams, objected to the assignment but were overruled.

The prior record of Mr. Lyons is significant. Just prior to his transfer to the position of deputy chief, Division of Evaluations, he had served for about two years as a security officer in Athens, Greece. An inspection of the post revealed that he had failed to disclose to his headquarters that there had occurred at the post 52 security violations involving official and "Confidential" material, 23 security violations involving "Secret" and "Top Secret" matters and approximately 125 security violations involving "Official Use Only" material.

These violations had occurred at different times, over a period of at least a year. Lyons ignored them all, although it was his duty to take action. Overruling the objections of Mr. Adams and Otepka to the assignment of

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Lyons as deputy chief, Division of Evaluations, Mr. William O. Boswell, the director of the Office of Security, wrote that "Lyons has made a serious error of judgment and must live with the consequences. In view of his demonstrated abilities and very good performance, I do not consider that this single error raises a fundamental question of his integrity, nor does it indicate such a degree of lack of respect for regulations, of reliability, or of judgment, as to warrant the action you propose."

Mr. Lyons advocated the "progressive approach" to security matters. Thus, in an efficiency rating prepared for the rating period ending Sept. 30, 1961, Mr. Lyons wrote, concerning the person being rated, and contrasting him with members of another school of thought:

"In common with other officers in the section, he is inhibited by the ultra-conservative attitude which seems to have grown up in the Personnel Security Administration of the department over the past number of years, and which is reflected in the making a monument of tradition, leaving little room for individual opinion or new approaches. The result is that individual personnel security cases must be decided on a strict *corpus juris* basis, and even in their physical format must adhere to strict traditional concepts. Mr. — personally is of a much more liberal bent, and with the gradual dissipation which is now evident of the old guard concepts which dominated the personnel security program. I feel that Mr. — is well suited to be in the vanguard of the more progressive approach now demanded."

"He has a commendable distaste for red tape and if he could be made to feel that direct realistic action would not be rejected, he could do much to advance the currency and effectiveness of the Security Program."

The conduct of Mr. Lyons as Otepka's deputy was such that Otepka complained about him to Mr. Boswell. As a result, Mr. Boswell temporarily transferred Lyons into the Investigations Division and then put him on Boswell's personal staff as executive director, thus making him his top executive assistant.

WIELAND CASE

One of the first cases examined by Otepka in connection with the "special project" was the case of a high-ranking officer, William A. Wieland. In August 1961 Otepka, who had personally evaluated this case, completed an extensive summary and analysis of the case, together with a digest containing some 136 pages.

Otepka's presentation dealt with allegations that Wieland, as the recipient of significant intelligence information indicating that Fidel Castro was a Communist and a person not to be supported by the United States, had concealed such information, made false statements, and exercised extremely bad judgment. The report and digest correlated material provided by Office of Security and FBI investigations, as well as intelligence reports. Otepka recommended that the board of the Foreign Service should consider the case, to determine whether or not Wieland had been guilty of misconduct under the Foreign Service Act.

Otepka presented his report and digest to Mr. Boswell, who had primary responsibility in the matter, but Boswell instructed him to carry the material directly to the office of the deputy under secretary for administration, Mr. Jones. Otepka complied with Boswell's instructions.

He was also instructed by Mr. Pollack, a member of the staff of the then assistant secretary for administration, Mr. Crockett, to provide a copy of his digest for Abram Chayes, the department's top legal adviser, and a copy for John Siegenthaler, special assistant to Atty. Gen. Kennedy. He furnished the copies as instructed. The connection of

the attorney general with the matter was not explained.

Shortly thereafter, in September 1961, Boswell orally instructed Otepka to issue a security clearance on Wieland. Otepka replied that the department regulations and practices required a written decision on his recommendation—which was true—and that he could not act on or close out a case on the basis of an oral instruction. Otepka therefore held the case awaiting further instructions. Late in October 1961 the Department of State announced in a press release that a general reduction in force in the department would be made, because of reduced appropriations. On Nov. 1, 1961, Boswell sent for Otepka and informed him that 25 persons in the Office of Security would be affected by the reduction in force. He stated bluntly to Otepka "your name heads the list."

He requested that Otepka voluntarily relinquish his position as deputy director in order to avoid a "bumping" procedure, which would enable Otepka to displace another career employee in his occupational specialty, with lower retention rights. Otepka refused to waive his "bumping" rights.

Boswell then sent for Elmer Hipsley, chief of the Division of Physical Security and a friend of Otepka, and told him that "your friend, Otepka, is going to displace you in your position." It turned out, however, that the "bumping" was avoided, when the position of chief, Division of Evaluations, was vacated by Emery J. Adams and Otepka was reassigned to that position. In lieu of becoming the chief of the Division of Physical Security, then headed by Hipsley.

SECURITY REORGANIZATION

The reduction in force in the Office of Security, and in particular its impact on Otepka, resulted in an inquiry by Sen. Karl E. Mundt and an investigation by the Senate Internal Security subcommittee. Both Otepka and Hipsley testified during this investigation.

In December 1961 Otepka considered the case of John L. Topping, a career Foreign Service officer who had served in Cuba during the critical period when Castro rose to power. As in the Wieland case, it was alleged that Topping had displayed strong partiality to Castro while downgrading the president of the government of Cuba.

Otepka recommended that the allegations concerning Topping be investigated by the Federal Bureau of Investigation. He pointed out that the State Department investigation of Wieland had been inept, that information about Wieland's past activities had been ignored or glossed over and that some of the investigators who were members of the Foreign Service were sympathetic to Wieland and allowed their sympathy to color their reports.

He said "that the FBI had greater resources in this kind of situation and they had done an excellent job in the Wieland case and [he] thought they should develop all of the leads in the Topping affair." Boswell insisted that Topping be investigated by the Office of Security. After Otepka's removal from participation in the day-to-day operations of the Evaluations Division, Mr. Topping was cleared and became the United States representative to the Council of the American States.

In January 1962 Boswell made a sweeping reorganization of the Office of Security. He abolished the position of deputy director, Office of Security, which Otepka held, and abolished the Division of Physical Security which Mr. Hipsley headed. From the Division of Physical Security Boswell created three separate divisions. He assigned Foreign Service officers to head two of them and made Mr. Hipsley chief of the third. Mr. Hipsley's authority was considerably reduced. Otepka's authority was also greatly reduced, when he was "bumped down" to the position of chief, Division of Evaluations.

As a result of the reorganization there were five division chiefs instead of three. The five men who had been working with Otepka on the special project were transferred with him to the Division of Evaluations. The workload of the Division of Evaluations was such that the special project team was required to give full time to routine matters and the special project was abandoned.

POINTED QUESTION

On Jan. 24, 1962, during a press conference, a newspaper reporter questioned President Kennedy about William A. Wieland, whom the reporter described as a security risk. The reporter's statement was challenged by the President. Immediately thereafter, Boswell instructed Otepka in writing to issue a security clearance for Wieland, and Otepka complied.

In February 1962, however, Otepka developed new evidence indicating that Wieland had made a false statement to Otepka and co-evaluator Harry Hite with respect to the number of times that Wieland had personally met with Fidel Castro. Accordingly, Otepka recommended to Boswell that the Wieland case be reopened, reinvestigated and readjudicated. Boswell ignored the recommendation.

Upon resuming his position as chief of the Division of Evaluations and taking immediate charge of the work of that office, Otepka reviewed the clearances that had been granted to high-ranking appointees of the Department of State in the year 1961. He found gross irregularities in the handling of these clearances.

The irregularities involved the granting of emergency clearances or waivers to persons who were being assigned to positions or nominated to positions on the presidential level requiring Senate confirmation. Waivers of investigation had been granted to persons who should have been investigated before appointment, because there was unresolved derogatory security information in their files. Clearances had been backdated so that they would conform to the actual dates when the persons cleared entered on duty. Otepka also found cases in which waivers had been back-dated, some of them as much as 40 days.

Otepka reported these matters to Mr. Boswell orally in February 1962. Although the procedures followed were in violation of regulations, Boswell was not impressed, but said in substance that these cases had been handled according to the prerogatives of management, and that Otepka was not to interfere.

BACKDATED CLEARANCES

On March 17, 1962, Otepka gave Boswell a memorandum describing the cases which he had uncovered. Boswell at this time instructed Otepka not to participate further in the survey but to turn everything over to him and he then turned it over to the Foreign Service Inspection Corps for investigation.

This investigation confirmed the statements made by Otepka. In fact, it was discovered that in one case a clearance had been back-dated 135 days, and in another case the clearance had been back-dated 65 days. There were 152 waivers and 44 back-dated clearances.

On March 8, 1962, in the course of testimony before the Senate Internal Security subcommittee, Mr. Boswell and Mr. Jones both denied any knowledge of the backdating of clearances. On April 12, 1962, Otepka testified before the Internal Security subcommittee that he had brought the matter of the back-dating irregularities to Boswell's attention orally in the latter part of February 1962, and later had given him a memorandum in which a number of cases were identified. Otepka's testimony squarely conflicted with the testimony of Boswell.

The findings of the Foreign Service investigators with respect to back-dating irregularities

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ties were reported to the Senate Internal Security subcommittee in March, April and May 1962.

On March 8, 1962, Otepka sent Boswell a summary evaluation of a prospective presidential employee. The summary recited among other matters that in November 1960 the prospective nominee had picked up his wife bodily, carried her from their house into a public street, kicked her and had then taken her clothing from the house and strewed it on the lawn, over the shrubbery and into the street. The episode was witnessed by neighbors and was reported to the police.

Boswell returned the summary to Otepka with a note stating "the gory details of a family fight have nothing to do with security or suitability." The summary was therefore rewritten and the information concerning the episode in question was deleted, except for a brief reference to it without details. As a result the matter was not fully and properly brought to the attention of the secretary of state.

This incident troubled and confused the evaluators on Otepka's staff who, in the past, has been instructed by their superiors to present all pertinent information relating to security and suitability and to the pre-employment personal conduct of individuals under consideration, for the specific attention of the responsible managerial officials. Deletion of such information was a violation of the professional duty of evaluators to report the facts in an objective manner.

In April 1962 Boswell transferred from the jurisdiction of Otepka the functions of receiving, reviewing, evaluating and disseminating intelligence information received from the FBI, the CIA and other intelligence agencies.

This function was important to the accomplishment of the work being carried out by Otepka. This had been pointed out in February 1962, in testimony before the House Judiciary Committee by Mr. John W. Hanes. Mr. Hanes emphasized the importance of the correlation of all available information by evaluators.

SISS HEARING

In his testimony before the Senate Internal Security subcommittee in April 1962, Otepka testified to the facts with respect to the handling of the Wieland case by the Department of State, so far as he knew them. Following Otepka's testimony, on April 12, 1962, the record shows that the following statements were made:

"Sen. Hruska: I want to say I have been very much impressed with your testimony, Mr. Otepka, and the fashion in which you have comported yourself here. It has been a difficult field you are in, stretching over many years, with, of course, voluminous records and complicated procedures, and I thought that it was very well done.

"Mr. Otepka: Thank you, Senator.

"Mr. Sourwine: And I would like to add that I may have been a little rough on Mr. Otepka today, for which I apologize, as far as anything personal is concerned. I have been trying to get the facts into the record. I think Mr. Otepka has done a magnificent job of trying to protect those matters which he feels he is required by the department to protect, and at the same time I will say frankly I think he has gone a long way towards putting his neck on the chopping block by answering those questions which he felt he could answer.

"And I want to suggest on the record for this member here and for those who were not here but who will read it, to me the record seems to indicate that Mr. Otepka is on the downgrade in the State Department. He is being shunted aside. He is being given lighter and lighter responsibilities. And I can come to no other conclusion than the fact his conduct in the Wieland case and other cases and his insistence upon what he considers good se-

curity is harming his career in the State Department. And I think that is a matter most to be deplored, and I urge the committee to do whatever it can."

On April 16, 1962, Mr. Boswell was succeeded as director of the Office of Security by John F. Reilly. Just before his departure, Boswell obtained and examined the security file of John Paton Davies. Although he asked Otepka questions about the file, he did not disclose the purpose of his study.

Davies was a career Foreign Service officer who had been dismissed as a security risk under Executive Order 10450. The charges against Davies involved alleged disclosure of classified information and sympathy with the cause of Chinese Communists. Otepka had evaluated the case in 1954.

John F. Reilly had served as an attorney in the Department of Justice from 1951 until 1961, when he transferred to the Federal Communications Commission. After serving for approximately 11 months with the Federal Communications Commission he transferred to the Department of State as Boswell's replacement. He was recommended to the Department of State by Mr. Andrew Oehmann, who was executive assistant to Atty. Gen. Robert F. Kennedy.

In a conversation shortly before Reilly came on duty, Boswell told him that he had been having difficulty with Otepka, that he was concerned about leaks from the Office of Security to the staff of the Senate Internal Security subcommittee, for which he suspected Otepka was responsible. He said specifically that he believed Otepka had informed the subcommittee about the back-dating of waivers, that he was upset or concerned about that.

It was Reilly's definite understanding from Boswell that he, Boswell, had been trying to "get Otepka out"; and Reilly continued this effort. In fact, in testimony before the Senate Internal Security subcommittee on Nov. 15, 1963, Reilly admitted that at some time in 1963 he might "well have said . . . facetiously" that he "went down there to get Otepka."

Although Boswell in his subsequent testimony before the Senate Internal Security subcommittee denied that he tried to get rid of Otepka or intended to indicate to Reilly that he was making any such effort, he admitted that he had discussed Otepka with Reilly and that he had in fact found Otepka "troublesome."

WAR COLLEGE PLOY

He said Otepka was troublesome because of his reluctance to accept the decisions of his superiors, and he mentioned the Wieland case matter as one instance of this difficulty. He admitted further that he had refused to give Otepka an efficiency report and was not going to do it unless ordered to do it by Mr. Crockett.

Promptly after he took office as director of the Office of Security Reilly acted to move Otepka out of that office.

On May 7, 1962, he called Otepka into his office and opened the conversation by saying "where is your rabbit's foot?" When Otepka asked what he meant, he said that Otepka had been recommended to attend the National War College course which began in August 1962 and which lasted for 10 months. He asked Otepka to indicate in writing whether he would be willing to attend the War College.

The next day, May 8, Otepka sent Reilly a memorandum stating in part, "I am pleased that I have been accorded this honor which came as a distinct surprise to me in the light of recent organizational changes in SY." The phrase "the recent organizational changes in SY" referred to the professed intention and plan of the department to utilize Otepka's special talents exclusively in personnel security administration.

Reilly directed Otepka to delete the ref-

erence to his surprise and to the recent organizational changes and to submit a statement indicating only his acceptance or rejection of the assignment. Otepka complied with this instruction.

Having received Otepka's revised acceptance, Reilly wrote a memorandum for his superiors, praising Otepka for "his ability and his dedication to the security program," and stating "Selection for the National War College is a high honor for a career officer and offers almost unlimited opportunity for career development. Therefore, although releasing Mr. Otepka will work a hardship on the Office of Security, it is my view that I should not stand in Mr. Otepka's way, and accordingly, I recommend that he be released as he has requested."

Otepka became suspicious of the motivation underlying his assignment to the National War College. Looking into the matter, he found that normally selections for the National War College are made in January and February of the year in which the term of attendance begins.

He was informed that the Office of Personnel had given no routine consideration to his selection and that the recommendation in his case had come as a surprise to that office. He was aware also that advanced training in foreign affairs at the War College was not needed in connection with his job in personnel security administration.

He inquired of Reilly as to what his future would be in the State Department in the security field, pointing out to Reilly that persons selected for the War College were returned to their jobs when their training was finished. This was true always with respect to members of the classified Civil Service as distinguished from Foreign Service officers.

Reilly informed Otepka that he would "fill in behind" him with another person, that he had no plans for returning Otepka to the field of personnel security administration and specifically he had no plans for returning him to the Office of Security; that there would be no place for him in that office.

In the light of these circumstances Otepka "smelled a rat"; that is, he concluded that the assignment was being given to him for the purpose of getting him out of security. Accordingly, on June 5, 1962, he orally requested that his nomination be withdrawn; and on June 14, 1962 he formally declined the appointment.

On June 7, 1962, two days after Otepka orally declined the assignment to the National War College, the deputy under secretary for administration, Roger Jones, testified before the Senate Internal Security subcommittee that the primary reason for the assignment of Otepka to the War College was that he "seemed to his prior supervisor, Mr. Boswell and his present supervisor, Mr. Reilly, to be a tired and worried man on whom responsibility had closed in to the point where he needed a break." Jones testified that the purpose of the assignment was to give Otepka "a chance to recharge his battery."

No previous suggestion had been made to Otepka by any of his superiors that he was tired or overworked, or that his battery needed recharging, and in fact he was neither tired, overworked nor in need of recharging.

In June 1962 Frederick Traband was assigned to Otepka's office as his deputy. Traband had been serving in the Division of Investigations, where his most significant experience was in the investigation of cases of State Department employees and applicants suspected or accused of homosexual perversion. Reilly assigned him as Otepka's deputy without consultation with Otepka.

On July 1, 1962, David Belisle was appointed as a special assistant to Reilly, in which capacity he acted as deputy director of the division. Otepka was informed that Belisle was his superior and a person with

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whom he, Otepka, must consult in order to get to Reilly.

STAFF FRICTION

Belisle came to the State Department from the National Security Agency, where he had served as deputy director of the Security Office. He was a friend of Reilly, who was responsible for bringing him to the Department of State. Traband and Belisle participated in the subsequent surveillance of Otepka, and signed statements from them are attached to the charges preferred against Otepka.

Friction soon developed between Traband and Raymond Loughton, a member of Otepka's staff. Loughton had come to the Department of State from the office of the secretary of defense where he was deputy chief of security. He had wide experience as an evaluator, especially in the field of Communist subversive activities, having served as a ranking evaluator on the Loyalty Review Board of the Civil Service Commission. It was Otepka's wish that in view of Loughton's extensive experience he should share in the administration of the division with Mr. Traband and this was resented by Traband.

In July 1962 the Division of Investigations considered the case of a prospective nominee to a position as ambassador. The individual involved had been the subject of an investigation by the FBI involving fraud against the government. Although the Department of Justice had ruled that no criminal prosecution for fraud was warranted, the file reflected a number of unresolved allegations bearing on the security standards and criteria of Executive Order 10450.

Loughton took the position, and Otepka concurred, that the refusal of the Department of Justice to prosecute was not controlling; that under the regulations the Department of State was required to consider the matter independently, in the context of the security standards. Reilly insisted that the Department of Justice having determined that no prosecution would lie, that was the end of the matter.

After a number of discussions between Otepka and Loughton on the one hand, and Reilly and Belisle on the other, Reilly ordered that the individual be cleared, despite the strong objections of Otepka and Loughton. The unresolved allegations of fraud were never resolved.

The treatment of the matter was not consistent with the regulations. It appeared to Otepka that "Mr. Reilly was simply trying to accommodate someone higher up rather than give rigid application to the security rules and criteria of the State Department."

In July 1962, at the request of Mr. Harlan Cleveland, assistant secretary of state for International Organization Affairs, Otepka talked with him about the case of Irving Swerdlow. Swerdlow had been recommended by Cleveland for a position in the Department of State. Mr. Cleveland and Mr. Swerdlow had served together in the Economic Cooperation Administration (later known as the Mutual Security Agency) and had also been associated at the University of Syracuse.

QUESTION ABOUT HISS

Mr. Cleveland asked Otepka about the delay in the security processing of Swerdlow's appointment. Otepka answered that he foresaw no early completion of the Swerdlow investigation and evaluation. He expressed doubt that clearance could be issued until a number of matters appearing in the records and files could be considered and resolved by the Office of Security, which would take a long time.

Otepka noted that Swerdlow had been dismissed as a security risk by the Mutual Security Agency, and that the top security officer in the agency had commented "that Swerdlow's security file was one of the rottenest he had ever seen." Cleveland responded

with critical remarks about the administration of the Mutual Security Agency. Harold Stassen. He said that Stassen had extreme views with respect to security.

Cleveland then asked "If there were any prospects for the re-employment of Alger Hiss in the United States government." Otepka said there was no "chance for Alger Hiss to be re-employed in any government agency because by operation of law, a person convicted of a felony is barred from a federal job. Otepka reported his conversation with Mr. Cleveland to Reilly.

Swerdlow was subsequently appointed to a position in the State Department. His case was evaluated by the man who had been described by Charles Lyons in 1961 as of a "liberal bent" and "well suited to be in the vanguard of the more progressive approach now demanded."

HARLAN CLEVELAND

As a result of his conversation with Cleveland and particularly because of Cleveland's interest in Swerdlow and Alger Hiss, Otepka reviewed Cleveland's security file. This review was also prompted by the fact that Emery Adams, then chief of the Division of Evaluations, who had handled the security clearance of Cleveland, had told Otepka that pressure was exerted on him to grant Cleveland a waiver without the completion of a background investigation.

Adams had protested, pointing to the file showing that Cleveland had interceded for 11 employees of the Economic Cooperation Administration and its successor agencies, whose removal as security risks had been sought by the Security Office. Adams recommended that Cleveland be denied a security clearance, but he was instructed to issue a clearance and did so; however, at that time he alerted Otepka to the need for maintaining the proper continuing security surveillance over the activity of Mr. Cleveland in the State Department.

Otepka's review of the file also disclosed that in his senior class year book at Princeton Cleveland had recorded his political affiliation as "Socialist." Further, the file revealed that Cleveland had been highly critical of security procedures and security officers and had been active in recommending reforms in government security programs which "would have made it a lot easier for persons like Mr. Swerdlow to get into the government without adequate background investigation."

Pursuant to his duty to maintain a continuing security surveillance over Mr. Cleveland's activities in the State Department, Otepka established a special file in his office in which he recorded his observations as to the persons Mr. Cleveland was bringing into the department. He placed in the file portions of FBI reports and other reports of security officers of the department or of other agencies.

The file was kept in his immediate office in a small safe adjacent to his desk. As we shall see, this safe was subsequently drilled, opened and searched in the course of Mr. Reilly's clandestine surveillance of Otepka.

On July 30, 1962, the New York Times published a letter signed by one Leonard B. Boudin. The letter appeared under the heading "Screening U.N. Employees." In his letter Boudin complained about the security screening of U.N. employees. He said that "the carcasses of many devoted and brilliant international civil servants were destroyed in the hysteria of the 1950s."

BOUDIN'S COMPLAINTS

He deplored the fact that "the United States government is still enforcing President Truman's and President Eisenhower's Executive Orders which screen, on political grounds, American employees of the United Nations and other international organizations. The expressed criteria include membership on the attorney general's list; the

sources include derogatory information in congressional committee files; the procedures are based on undisclosed evidence. Such screening is inconsistent with the Charter's principle . . . the present Administration would now score a major achievement if it were to . . . eliminate its so-called loyalty program in the international field." In the course of his discussion Boudin mentioned the resignation of Andrew Cordier from the U.N. secretariat.

Otepka knew that Leonard Boudin had for many years been intimately involved with the Communist party and Communist affairs. He had been active in defending persons against allegations of communism, and had represented certain officials of the United Nations who were dismissed after refusing to answer questions put to them by the Senate Internal Security subcommittee.

An official in the Department of Justice sent Reilly a clipping from the New York Times containing the Boudin letter of July 30, 1962. The clipping, covered by a Department of Justice "routine slip" with a personal note in longhand addressed to Reilly, reached him Aug. 1, 1962. On Aug. 3, 1962, Reilly initialed the slip and sent it, together with the clipping, to Otepka.

In August 1962 Otepka was officially informed by memoranda to the Office of Security that Harlan Cleveland wished to set up an Advisory Committee on International Organizations. Mr. Cleveland had personally selected the eight members of the committee. He wished them to be appointed immediately without preappointment investigation—in other words, he wished to invoke the waiver procedures.

Otepka objected, pointing out that earlier in the year emergency clearances had been curtailed and further pointing out that background data on certain of the individuals involved required a full investigation and a careful review of the results of that investigation before their entry on duty. Otepka documented his objections in memoranda to Reilly, one of which, the memorandum of Sept. 10, 1962, is State Department Exhibit 7, which is the basis of Charge No. 1.

COMMITTEE DISPUTE

Otepka was especially concerned about three of the men selected by Mr. Cleveland for membership on his committee. These three men were Harding Bancroft, Ernest Gross and Andrew Cordier—the same individuals mentioned by Mr. Boudin in his letter. The record revealed that one or more of these men had served on the personal staff of Alger Hiss in the State Department, that all three had close and sympathetic associations with him, that they had stated they did not believe in his guilt, and that in their opinion he was not a security risk.

In Otepka's opinion this derogatory security information demanded complete resolution before these persons were appointed. Otepka brought these matters to Reilly's attention by memoranda.

The objections of Otepka were met or circumvented by Cleveland and Reilly, who decided that the members of the committee "would be entered on the rolls of the State Department as consultants, and that they would serve on an ad hoc basis, that the positions to which they would be appointed would be designated as nonsensitive rather than sensitive as initially proposed. Therefore, under the security procedures these individuals could be given assignments in the department without a prior investigation—that is, before appointment—with the explicit understanding that they would be given access to only such information as they needed in the performance of their work on the committee, and not to have any general access to any other information normally available to people in the State Department who have full clearance."

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On Feb. 19, 1963, the Advisory Committee submitted a draft report to the Department of State and the report was circulated in the department. Otepka obtained a copy of this draft report from a member of the Bureau of International Organizations, which was headed by Mr. Cleveland. He discovered that recommendations in the draft report coincided with the position taken by Boudin in his letter to the *New York Times*; they would have implemented the suggestion of Boudin that pre-employment investigation of American appointees to U.N. agencies be dispensed with.

Otepka observed further that in general the draft report recommended a reversion to the program and procedures advocated and administered by Alger Hiss for the screening of American personnel in the United Nations. In this connection Otepka recalled that in 1946 Hiss had prepared a list of 200 people whose names were submitted by the State Department to the U.N. as possible appointees to U.N. jobs. It turned out that 40 of these persons who had subversive connections were later dismissed from the United Nations, and 26 of the 40 invoked the plea of incrimination while testifying before the Senate Internal Security subcommittee.

Otepka brought the February 19 draft report to the attention of Reilly, and gave him a detailed memorandum setting out the facts and Otepka's views. Otepka never learned what Reilly's views were. "He kept telling me that he didn't have time to read my recommendations and suggestions."

On April 22, 1963, the Advisory Committee submitted a revised draft of its report, from which the recommendations coinciding with the views of Boudin and Hiss had been stricken.

In August 1962 another episode, involving Otepka and proposed appointments to an Advisory Committee, reached a conclusion. This episode began in February 1962 when the State Department's Bureau of Cultural Affairs proposed the establishment of an Advisory Committee on the Arts, consisting of members who would be placed on the rolls of the State Department, and would give guidance to the department's program for sending cultural presentation abroad. The program involved visits to the Soviet Union and its captive nations by United States cultural groups.

The names of 10 individuals who were nominated to serve on this committee were sent to Otepka by the Bureau of Cultural Affairs, with a request that the nominees be excused from completing government security questionnaires and other forms, and be placed on the rolls without investigation, but subject to post-appointment investigation.

Otepka protested strongly, pointing out that it was his duty to enforce the law and that the law required pre-appointment investigations and the completion of security processing forms. He said he would not be a party to any circumvention of required security practices.

He was particularly concerned with four of the nominees, because of their questionable past affiliations with Communist organizations and he demanded that they be subjected to full background investigations and that each of the appointees complete the required forms. These forms required the appointees to state any affiliation they might have had with organizations on the attorney general's list. Otepka was advised that one of the appointees positively refused to submit the forms and another would resist any order requiring him to complete them.

Otepka discussed the matter of the two appointees with Reilly, who "was very anxious to assist the Bureau of Cultural Affairs." Reilly "had the FBI run a special-type investigation without the use, as they normally should have had, of government security questionnaires completed by such

individuals." The results of the investigation, which was in fact cursory, were submitted to Otepka.

Reilly tried to persuade Otepka to make a security determination on the basis of this investigation, without the information and explanations that would have been contained in the security forms. Reilly said that the two individuals need not fill out personal history questionnaires before appointment. In a memorandum dated June 12, 1962, Otepka rejected Reilly's proposal.

FLEXIBLE RULES?

In this memorandum Otepka insisted that a full field investigation and an interview with each nominee was necessary, in view of their associations with many Communist organizations. He stated "no professionally competent evaluator who knows the Communist movement in the United States can favorably rationalize the conduct of either person from the available data." He pointed out that full field investigations and interviews were required by the regulations, by which professional security officers were bound; and that the intellectual brilliance and distinction of the persons involved did not exempt them from compliance with the rules.

He concluded: "If the present security rules are to be tempered to suit individuals rather than government, then I think someone in authority should change the rules so that those of us on the operating level who must follow rules may not be confused as to how and when to determine the security reliability of the privileged nonconformists as compared to those who do not join or lend their support to Communist causes."

Otepka was overruled by Reilly, who in August 1962 instructed Otepka to grant security clearances to the two individuals. Otepka complied, although security questionnaires had not been filed by the appointees and no adequate investigation had been made.

However, Otepka informed the Office of Personnel of the details of the cases, and as a result one of the individuals was not appointed because of the derogatory information in his file, and the other was dropped from consideration when he refused to complete the necessary forms. The action of the personnel office of course became known to Reilly.

In August 1962 Reilly was promoted to the rank of deputy assistant secretary for security. Belisle continued to hold the title of special assistant, but in fact exercised the functions of deputy director of the Office of Security.

He and Reilly accelerated their harassment of Otepka. Belisle began to send Otepka "all sorts of hand-written notes scrawled on calendar pads, torn ends of paper or on the reverse side of memo pads criticizing [his] evaluations or questioning the content of some of [his] evaluator's reports." Neatly typed correspondence setting out evaluative findings or the position of the Office of Security was returned to Otepka "with inked or penciled notations scrawled across the face of it."

STAFF INDIGNITIES

Sometimes Mrs. Mary Catucci, secretary to Reilly and Belisle, would relay their instructions to Otepka through Otepka's secretary. On one occasion Mrs. Catucci burst into a rage, cursed Otepka and threw objects around the room. On another occasion she threw herself on a couch and tore her hair. Complaints by Otepka about this behavior brought only the comment from Reilly that this was a personal matter between him and Mrs. Catucci.

The men on Otepka's staff were subjected to the same kind of harassment and indignity. Reilly told Otepka that Gardner was puerile. He told Loughton that there was no future for him in the Office of Security, and

he frequently informed Otepka that he, Reilly, had an unfavorable impression of Loughton.

Hite was reprimanded by longhand notes to him from Belisle, criticizing the content of summaries in his evaluation reports. These notes sometimes went directly to Hite without being called to Otepka's attention. Hippley, who had taken a new position as chief of Domestic Security, found his authority so reduced and he was so harassed by members of his staff who had been brought in by Boswell and Reilly, that he decided to accept an offer from Reilly to go to Geneva, Switzerland, as a conference security officer. He was succeeded by the obscure subordinate, Joseph Rosetti. Rosetti afterwards became a member of the burn-bag team that surveilled Otepka's trash, and a statement from Rosetti is attached to the charges against Otepka.

On the other hand, Otepka's other subordinates, Traband, Sabin and Bock, seemed to be immune from criticism and were frequent visitors of the offices of Reilly and Belisle. At about this time also Belisle was designated by Reilly as his top adviser on personnel security.

In October 1962 Reilly and Belisle issued instructions that field investigators in the Division of Investigations would submit reports of investigations containing only their conclusions as to the nature of information obtained from witnesses. This changed the established security procedure whereby investigators were required to state the testimony of witnesses in detail.

NEW PROCEDURES

Under the new practice, the investigator merely listed the identity of the witnesses interviewed and then stated that no derogatory information was revealed. The new practice of course made the investigator an evaluator. Otepka protested, upon the ground that investigators were "ill-equipped by lack of training and knowledge to determine what constituted derogatory information." Reilly overruled Otepka and issued an order putting his plan into effect.

This was the origin of the controversy concerning "short form reporting" which afterwards developed before the Senate Internal Security subcommittee and concerning which both Reilly and Otepka testified at some length. The Foghtanz report, State Department Exhibit 9, which is the basis of Charge No. 3, is relevant to this controversy.

Concurrently with his order for short form reporting, Reilly authorized members of the investigation division to grant security clearances to clerical personnel if, in their opinion, a report of investigation on an applicant was entirely favorable. At the same time Reilly delegated to personnel in the file room the authority to receive the results of national agency checks from the Civil Service Commission in the case of clerical personnel, and he authorized emergency security clearances if, in the opinion of the file room personnel, no derogatory information was revealed.

Otepka protested against these orders, as relaxation of proper security practices, but to no avail.

Again, concurrently with Reilly's change in the security practices, Belisle instructed Otepka that with certain exceptions investigative reports should be withheld from the Office of Personnel. This order made it impossible for the personnel office to exercise an independent judgment as to the suitability of an appointee, upon the basis of all the information gathered by the Office of Security. The independent judgment of the personnel office had resulted in the rejection of the two appointees to the Advisory Committee on the Arts, whose files Otepka had sent to the Personnel Office.

The new security practices instituted by Reilly and Belisle were in many respects similar to the practices which had been in

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effect at the National Security Agency during the period when Belisle was deputy director of the agency's Office of Security. Because of these practices the National Security Agency had failed to detect serious derogatory data in the files of Bernon F. Mitchell and William H. Martin, two cryptology experts who defected to the Soviet Union.

Their defection was the subject of an investigation by the Committee on Un-American Activities of the House of Representatives, which on Aug. 13, 1962, issued a report pointing out deficiencies in the National Security Agency's security practices. The practices criticized were the same as those instituted by Reilly and Belisle, and the deficiencies identified were the same as those pointed out by Otepka to Reilly and Belisle.

WIELAND AGAIN

In December 1962, by letter to the State Department, the Civil Service Commission submitted a transcript of a portion of the hearings on the Wieland case that had been published by the Internal Security subcommittee, and the Civil Service Commission advised the department that this transcript contained new data not theretofore considered by the department. This reference from the Civil Service Commission made it mandatory to reopen the case under the provisions of Executive Order No. 10,450, and the pertinent regulations.

After the clearance of Wieland in January 1962 Otepka had continually urged upon Reilly that the Wieland case should be reopened and readjudicated on the basis of new information that had come to Otepka's attention. Upon receipt of the Civil Service Commission letter, Otepka brought it to Reilly's attention.

Reilly called Otepka to his office and asked him how he felt about re-evaluating the case. Otepka said in substance that he had spent a great deal of time as the primary evaluator of the Wieland case, that he had been obliged to concentrate his attention on this and other controversial cases, instead of giving his attention to administrative duties. As a result he said his superiors had used this as an excuse to abolish his position and downgrade him. He explained that he did not wish this to happen again. Reilly told Otepka that he understood his concern.

Otepka said he would assign the case to Harry Hite, a member of his staff who had served as his co-evaluator on the first occasion when the Wieland case was considered, and that he would review Hite's evaluation. Reilly, however, said he would give the case to Robert McCarthy, that he wanted McCarthy to take a look at it and tell Reilly "what was in it."

Otepka replied that this would be a waste of time, that he was intimately familiar with the case and could tell Reilly what was in it. Reilly insisted that he wanted someone to take a fresh look at the case and the entire file was therefore given to McCarthy. McCarthy was a physical security specialist, not an evaluator.

The Wieland file was given to McCarthy in December 1962. At this time Otepka assigned the case to Hite for him to evaluate "if and when he got the file." McCarthy kept the file until April 1963, when it was turned over to Hite. When Hite received the file it contained no memorandum of McCarthy's conclusions, or any indication of what, if anything, he had done with it.

INADEQUATE REPORTS

In December 1962, Otepka complained in a memorandum to the chief of the Investigations Division that the security officer at Caracas, Venezuela, who was a Foreign Service officer, had submitted an inadequate report of investigation on another current Foreign Service officer. It was alleged that the Foreign Service officer under investigation had carried on an extra-marital affair with the wife of an American businessman and that he had also

had an affair with the wife of a State Department investigator. There were also complaints that he had exerted his influence to obtain the issuance of United States visas to Venezuelans whose records disclosed Communist activities.

The report stated that the two men assigned to investigate the case had been admonished by their superiors that it might prove embarrassing if all leads were followed out too thoroughly. Robert McCarthy was one of the two investigators. Otepka took the position that a full investigation should be made.

He discussed the case with Reilly, who suggested that the investigation and evaluation be handled with discretion, saying that he knew the investigator's wife who was involved and knew her to be devoutly religious and he could not see how she could have engaged in such activity. Otepka agreed that discretion was indicated but insisted upon full investigation and resolution of the matter.

Otepka's files reflected that in 1957, while posted to the American Embassy at Mexico City, the Foreign Service officer involved in the Caracas incident had been suspended for 15 days without pay, as a result of charges that he had engaged in notoriously disgraceful conduct.

It appeared that he admitted that he had engaged in a sexual liaison with the wife of the ambassador of another nation. Furthermore, in an interview with the American ambassador, he had defended homosexuality and insisted that homosexuals should not be regarded as security risks. Following his brief suspension he had been transferred to Caracas without loss of rank.

OTEPKA OVERRULED

The case of the Foreign Service officer in Caracas was evaluated by Raymond Loughton of Otepka's staff, who recommended that he be removed as a security risk. Otepka concurred in this recommendation in a memorandum dated June 19, 1963. In this memorandum he observed that friends of the Foreign Service officer were protecting him and that the Foreign Service Officer Corps had shown bias and exercised poor judgment in withholding information from the security officer. Among these friends was Robert McCarthy.

Otepka also pointed out that John Ordway, head of the Personnel Office, who had passed judgment on the case, should have disqualified himself because as a friend of the Foreign Service officer involved, he had been interviewed and had defended him. Mr. Ordway, it will be remembered, is the gentleman who signed the letter of charges against Otepka and thereafter held that the charges were sustained.

The Foreign Service officer involved in the Caracas affair was cleared and is still with the Department of State.

The files of the security officer reflected another instance in which McCarthy had withheld information from his reports to his superiors. This occurred in 1961 when McCarthy was stationed at Caracas. The American ambassador's automobile had been attacked and burned by a mob and his briefcase containing classified documents had been stolen. Subsequently, the documents were disclosed to the public by Che Guevara, a lieutenant of Fidel Castro.

McCarthy investigated the incident and submitted his report, which Otepka found "uninformative." Otepka asked for more details, which McCarthy supplied. McCarthy "was apologetic for the ambassador's negligence and for the presence of an alien chauffeur alone in the automobile with these classified documents." Further inquiry by Otepka developed that McCarthy had entirely omitted from his report the fact, known to McCarthy, that shortly after the theft of the documents an offer had been made to return them for a sum of money.

In January 1963 the assistant secretary for

administration, Mr. Crockett, designated Belisle as the head of a management survey team to inspect the functions of the Office of Security with a view to developing any needed improvement and detecting any deficiencies. In this capacity, and without the knowledge of Otepka or any consultation with him, Belisle ordered the "retirement" of valuable card indices which had been maintained in the Office of Evaluations.

These cards were useful tools for the evaluators, enabling them to determine quickly in any given case whether or not there was derogatory information in the files that should be further explored. Belisle insisted that the cards were needless records and that the evaluators could work from the files themselves. He ordered the cards wrapped up, tied and placed in file cabinets, and instructed the evaluators that the cards were no longer available to them for ready reference.

As a result, evaluators were put to great inconvenience, and material in the files concerning applicants for employment was overlooked.

In January 1963 Otepka submitted to Reilly a memorandum of the achievements of Otepka's division, to be included in a formal report to the deputy under secretary for administration. Otepka's memorandum contained a reference to the fact that the Office of Security had detected that emergency clearances for numerous high-ranking appointees had been antedated after Secretary Rusk had signed the waivers of investigation, and that this had led to discovery that many appointees had been improperly appointed without the required background investigation and without a security clearance.

Reilly sent Otepka's memorandum to Belisle with a long-hand note stating "Dave—I strongly question the wisdom of including O.F.O.'s last page [the reference to the emergency clearance matter]. It would make it look as if we were endorsing the jogging he gave Bos. & Roger Jones." The "jogging" to which Reilly referred was Otepka's testimony before the Internal Security subcommittee concerning emergency clearances. Pursuant to Reilly's objection the reference to the back-dating matter was deleted from the formal report to the deputy under secretary.

J. F. K. AIDE

In January 1963 Belisle sought to designate Joseph Rosetti to serve as the State Department's representative on the Subcommittee for the Protection of Classified Government Data of the Interdepartmental Committee on Internal Security. This committee was under the jurisdiction of the Department of Justice. Otepka had served on the committee since 1953 and was one of the two senior members.

Belisle said that Rosetti could represent the department's interest better than Otepka, because the functions performed by Rosetti were more akin to those of the committee. Rosetti was a young man whose record and achievements had been obscure until January 1961. He had at one time served as an aide to then Congressman John F. Kennedy.

In the period January 1961 to August 1962 he rose in grade from a GS-12 to a GS-15. After he was notified of his proposed designation to serve on the committee, he came to Otepka and said he was frightened at the prospect of such service, because he lacked the necessary experience. He also explained his position to Belisle, with the result that Belisle left Otepka on the committee but designated Rosetti as his alternate.

Again, in January 1963 Reilly dropped the name of Otepka from the list of key Office of Security personnel who would be available on weekends and holidays and after hours to receive information from the FBI. Reilly substituted Frederick Traband for Otepka on this list. Otepka was the only division chief omitted.

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When Otepka spoke to Reilly about the omission of his name, Reilly said he was substituting Traband because Traband was an expert on homosexual matters, but that if Otepka insisted, he would restore his name to the list. Otepka did not insist, feeling that it would be pointless to do so, although he felt also that Reilly's action was a downgrading of him in the department.

DISTURBING TRANSFER

In February 1963 Reilly authorized the transfer of the intelligence reporting function out of the Office of Security to the Bureau of Intelligence and Research. This function had previously been transferred from the Division of Evaluations to the Executive Office of the Office of Security.

The effect of this transfer was that the Division of Evaluations was required to depend upon persons outside the Office of Security to decide what information should be sent to the Division of Evaluations. The result in Otepka's opinion was to deprive the Division of Evaluations of useful information which in the past it had received on a timely basis, concerning the domestic subversive scene.

This information was contained in reports from the Federal Bureau of Investigation on the activities of members of the Communist party and foreign intelligence operatives in the United States. The Division of Evaluations coordinated such information with the personnel security program.

Otepka was especially disturbed by this transfer because he knew that in the Bureau of Intelligence and Research there were a number of persons whose security files reflected activities and associations with Communists. He was concerned also because the transfer had been recommended by J. Clayton Miller, who was an office mate of William Wieland, and shared a safe with Wieland, and whose security file revealed "a very highly questionable background."

It appeared to Otepka that J. Clayton Miller and Wieland were kindred spirits, as well as office mates, and it seemed strange to Otepka that Miller was assigned to survey Otepka's office at the same time Otepka was investigating Wieland. Otepka made his concern known to Reilly and Belisle, but without avail.

The security methods and procedures introduced by Reilly and Belisle became a matter of concern to other sensitive agencies in the government. There were complaints that the Department of State was not adhering to security standards. In particular, the Atomic Energy Commission and the Civil Service Commission complained that the Reilly-Belisle shortcut methods and short-form reports did not provide sufficient information for action to be taken, and did not meet government standards.

Otepka brought this situation to the attention of Reilly and Belisle on several occasions, and also discussed with them the transfer of the intelligence reporting function out of the Office of Security. Reilly and Belisle rejected Otepka's comments, saying they had made their decision. Otepka felt that it would be futile to carry his protests further, since it seemed clear to him that Reilly and Belisle had the full confidence and support of their superiors.

In February 1963 the Senate Internal Security subcommittee called Otepka as a witness. He was notified to appear by the office of the assistant secretary of Congressional Relations, and he immediately notified Reilly of this request. He told Reilly that it appeared to him that he might be asked for his views on State Department security practices and asked for Reilly's guidance. Reilly's response was only that he should tell the truth.

On Feb. 21, 1963, Otepka did appear before the committee and testified to the facts concerning the various reorganizations in the Office of Security and the procedural changes

instituted by Reilly. He also testified with respect to his attempts to secure his overdue performance rating.

In the period from February 1963 to June 1963 Otepka appeared before the Internal Security subcommittee on a number of occasions. Among other subjects, his testimony related to the conduct of the Wieland case, and the back-dating of security clearances.

His appearances were arranged by notifying the State Department that his presence was requested and the record before the subcommittee showed that he had been instructed by his superiors to answer the questions fully and truthfully, and not to withhold anything. Transcripts of Otepka's testimony were furnished to the State Department, and on all of the occasions when Otepka appeared during that period a State Department observer was present.

CAREFUL WITNESS

Otepka was a careful witness, who endeavored to be precise at all times in his answers and who volunteered nothing. Otepka's attitude disturbed the chief counsel for the committee, Mr. Sourwine, who had "the feeling that he was trying to protect the department, did not want to give any information that would reflect on the department." Thus, at the hearing on March 11, 1963, while Otepka was on the stand, the chief counsel made the following statement on the record:

"The situation here, Mr. Chairman, is that every now and then we have a witness here who is testifying under oath and I think we have that situation here, a witness who is doing his best to protect the department. And I do not demean him for that. But it gets like pulling teeth to try to get the information. But if we ask the right questions, he will answer directly, because he's under oath. Now, if we get a letter from the Department of State, we will have to give a very careful analysis of the letter and then we will have to talk to somebody about what it means."

In his March 11 appearance before the subcommittee, Otepka testified concerning the proposals of the Advisory Committee on International Organizations with respect to the clearance procedures for Americans employed by United Nations agencies. The committee was interested in the similarity between the proposals of Leonard Boudin and those contained in the Advisory Committee's draft report. Otepka was asked for a copy of the draft report but declined to produce it.

Otepka obtained a copy of the transcript of his testimony and furnished it to Reilly, as he had furnished copies of his previous testimony. Reilly's only comment was "that Mr. Sourwine was meddling in the department's business."

On March 13, 1963, two days after the hearing on March 11 in which Otepka had testified, Reilly arranged for the surveillance of Otepka's burn bags. These arrangements are described in the letter of charges, Document No. 1 in the appeal file.

BURN BAGS SEARCHED

Reilly, Belisle and Rosetti together made the arrangements, which were that Traband or his secretary, Mrs. Schmeizer, would notify Rosetti when she was going to take Otepka's burn bag to the depository, she would mark the bag with an "X" and Rosetti would pick up the burn bag at the depository and bring it to Belisle's office, where Reilly, Belisle, Rosetti and another Reilly lieutenant named Terry Shea would examine the contents.

On March 18 Reilly discussed with Elmer Dewey Hill, one of his subordinates, the possibility of intercepting conversations in Otepka's office. His purpose was to find out what was going on in that office, who Otepka was talking to, and what he was saying. Reilly instructed Hill "to see if he could not come up with some technique that would

not be too easily detected, and to report back to me."

Thereafter Hill repositioned the wiring in Otepka's office telephone, so as to convert it into a listening device. This modification or installation was disconnected two days later after Otepka made a complaint about trouble on his telephone line. Reilly ordered the installation disconnected, one reason for this order being that he was afraid it might be discovered. The wiring was disconnected by Hill in the evening, while Reilly stood outside Otepka's office as a lookout.

"BUGGING" DENIED

While the installation was in place Hill listened in from time to time and two reels of tape, recording Otepka's telephone conversations, were made. According to Hill's subsequent testimony before the Senate Internal Security subcommittee he turned these two reels of tape over to an individual who was a stranger to him. He swore that he did this on Reilly's instructions, and that Reilly had someone listen to the recordings.

In his testimony at this hearing, however, Reilly swore that he had no recollection whatever of any interception of Otepka's telephone conversations, or of any recordings, or of hearing any tapes played, or of ordering Hill to turn any tapes over to anybody. His mind, he said, was a complete blank on the subject, and he could neither admit nor deny the truth of Hill's testimony.

He swore also that when he was questioned about the matter by Mr. Ehrlich, of the Legal Advisor's Office, and Under Secretary Ball, in November 1963—approximately eight months after the incident occurred—his memory even then was a blank so far as telephone intercepts and recordings were concerned.

In response to a demand by counsel for Otepka that the State Department produce the recordings and any transcripts made from them, counsel for the department stated that he had been informed that the recordings had been erased and that no transcripts were made. Department counsel further stated "that there has been no identification of the stranger" to whom Hill said he gave the tapes, "although efforts have been made."

Beginning in March 1963 and continuing through May 1963, Otepka, members of his family and neighbors observed that a parked car with a male occupant frequently appeared near Otepka's home or in front of it. When Otepka notified the police authorities, the man never reappeared again. He identified himself as a "credit investigator."

At the time Reilly ordered the surveillance of Otepka's office and of his burn bags Otepka had not done anything wrong, so far as Reilly knew. Reilly swore in this hearing that the reason for his order was that he suspected that Otepka "might be privately furnishing information to Mr. Jay Sourwine, chief counsel of the Senate Internal Security subcommittee."

He said the grounds of his suspicion, in addition to his early conversation with Boswell, in which Boswell voiced similar suspicions, were (1) that in a conversation with Mr. Sourwine, shortly after Reilly took office, Sourwine asked him about a pending matter being considered within the department, which Reilly thought was the appointment of Archibald McLeish to the Advisory Committee on the Arts, and (2) that early in 1963 Sourwine had told him "shortly we are going to have Otepka here and have him testify concerning the department, and then when that is done, we will probably have a few questions for you."

SAFE OPENED

On or about March 13, 1963, on orders from Reilly, Otepka's safe was surreptitiously drilled, opened, and searched. Among many sensitive files relating to security problems which Otepka kept in this safe were the security files of Harlan Cleveland and Sey-

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mour Janow. When Otepka's burn bags were opened and examined by Reilly, Belisle and Rosetti, Reilly stated that he was especially interested in any papers relating to the case of Cleveland and Janow.

Otepka had the Cleveland and Janow files in his safe so that he might maintain a record of their activities, as his duty required him to do. With respect to Cleveland, he "was interested in seeing who he was recommending for positions in the department."

In the case of Janow, he was holding the file pending resolution of serious derogatory information with respect to Janow. Specifically, there was an allegation that Janow, while an official of the Agency for International Development, had retained a financial interest in a private business which was supplying services to AID, under contract with the federal government.

The file disclosed that the Department of the Army was still investigating Janow's involvement in this possibly illegal venture; but nevertheless, over the objections of Otepka's office, the nomination of Janow to be assistant administrator for the division of Far Eastern Affairs of AID was submitted to the Senate for confirmation, and he was confirmed Feb. 1, 1961.

The submission of the nomination to the Senate before an adequate investigation had been completed was in violation of both the Senate rules and White House policy. Accordingly, Otepka was holding the Janow file so that he might correlate the report of investigation, when received, with the file.

Following Otepka's appearance before the subcommittee on March 19, 1963, Chief Counsel Sourwine told him he had met with Reilly off the record, that he was dubious about Reilly and that he planned to call him as a witness. He asked Otepka if he would suggest questions that could be asked of Reilly.

Otepka did prepare certain questions, based upon published testimony given by Boswell in March 1962, concerning the department's plans to spend large sums of money for electronics equipment, and based also on information given to Otepka by a former department employee, George Pasquale. Pasquale's information related to the conduct of Elmer Hill, who was in charge of the electronics program.

NIGHTTIME VISIT

The carbon paper used in typing these questions was thrown into Otepka's burn bag by his secretary. It was retrieved by Reilly and the questions appearing thereon are reproduced and attached as an Exhibit to the [State Department] charges, Document No. 1.

On the night of March 24, 1963, at about 10:30 p.m. when Otepka chanced to be in his office, Belisle walked in, accompanied by Terence Shea, an investigator from the Division of Investigations, who had served with Belisle in the National Security Agency.

They appeared surprised to see Otepka and said nothing for a moment; Belisle then said he thought he had seen a charwoman enter the office and he had followed her. Having been there for some time, Otepka knew that no charwoman or anyone else had come into the office shortly before he entered. Otepka concluded that Belisle and Shea were there for the purpose of conducting some sort of surveillance of his office.

On March 4, 1963, Otepka was visited in his office by George Pasquale, an electronic engineer whose employment by the State Department had recently been terminated on the recommendation of Reilly. Pasquale related to Otepka that in April 1962 he had accompanied Elmer Dewey Hill, a member of Reilly's staff, on a trip to Warsaw, Poland. Pasquale described to Otepka a number of instances of misconduct on the part of Hill during the trip. The misconduct, which had occurred in public, consisted of "vulgarity and obscenities and intoxication."

Pasquale had made a written report on Hill's conduct, but this report was sequestered by Reilly and was not placed in Hill's file. No action was ever taken against Hill, but shortly thereafter Reilly terminated Pasquale's employment.

In addition to his written report, Pasquale orally informed Belisle and Rosetti about the conduct of Hill in Warsaw. Belisle suggested that Pasquale should take his complaint to the Internal Security Subcommittee, and Rosetti gave Pasquale the telephone number of the chief investigator for the subcommittee. Pasquale did take the matter up with the subcommittee.

In March 1963 the Civil Service Commission made one of its regular routine inspections, as provided in Section 14 of Executive Order 10450, into the manner in which the security program was being carried out by the Department of State. As was customary, Otepka dealt with the inspector on behalf of the department.

The inspector brought with him a list of files that he wished to examine, among them being the file in the William Wieland case and the file on Elmer Dewey Hill. The Wieland case was selected as a representative security case, and Hill's file was examined because he had taken office subsequently to the last previous inspection.

In connection with the Hill file Otepka advised the inspector to see if it contained any derogatory information. The inspector reported that he found no derogatory information in the file. Otepka then told him about the Pasquale report.

The inspector asked Reilly where Pasquale's report was and Reilly responded that he could not have this information, and "warned him not to get involved in the Elmer Hill case." After representations were made to Reilly by the Civil Service Commission the inspector was given the Hill file but it still did not include the derogatory report.

Late in March 1963, while Otepka's regular secretary, Mrs. Powers, was ill, Mrs. Schmelzer, who was Mr. Traband's secretary, substituted for her. Otepka noticed that Mrs. Schmelzer was "unduly curious" about material in Otepka's safe, containing the security files of Harlan Cleveland and Seymour Janow.

His observation of Mrs. Schmelzer's activities caused Otepka "to suspect by this time that there was something peculiar going on, and I felt that she possibly was a part of a group in my office that had been asked to maintain some sort of a surveillance over me." Because of his suspicions Otepka had the combination to his safe changed. Mrs. Schmelzer was later revealed to be a member of the burn bag surveillance team organized by Reilly and Belisle.

On April 5, 1963, Otepka was instructed to confer, and he did confer with Leo Harris, a staff assistant to the department's legal adviser, Abram Chayes. Mr. Harris wanted Otepka's views with respect to the pending attempt by a former employee of the department, who had been removed as a security risk, to gain reinstatement. The discussion related to the department's regulations precluding the re-employment of any person who had been dismissed as a result of adversary proceedings under Public Law 733.

Mr. Harris told Otepka that Reilly had endorsed a proposed change in the regulations which would permit the re-employment of former employees who had been dismissed as security risks. Harris said that consideration was being given to the re-employment of John Paton Davies, who was precluded from re-employment in the State Department by the existing regulations; that Reilly favored the proposed change which would permit the re-employment of Davies.

Otepka said he was opposed to any such change in the regulations, and pointed out that Davies had been dismissed after a hearing before a Security Hearing Board, that the

vote of the Hearing Board was five to nothing for dismissal, and that Secretary Dulles had concurred. The case of John Paton Davies had been evaluated by Otepka in 1954, and it was his findings which had resulted in the dismissal of Davies as a security risk.

PHONE TAP?

It will be recalled that just before he was succeeded by Reilly in April 1962, Boswell obtained the security file of John Paton Davies, and worked on it in secrecy. Otepka's conversation with Mr. Harris in April 1963 suggested to Otepka that Reilly was carrying on a project that Boswell had started.

In April 1963 Otepka and his secretary, Mrs. Powers, noticed that Otepka's office telephone "was acting in a very peculiar manner." After dialing, the phone appeared to be dead. On other occasions a loud clattering or clicking was heard, and sometimes audible conversations of strangers on the line were heard. A member of the Domestic Security Division, called in by Otepka to listen, immediately stated "your phone is bugged." A professional engineer, Stanley Holden, was then called in to check the telephone.

Mr. Holden reported that the telephone appeared to be in a normal condition, but gave Otepka a cautious admonition that it might be tapped. He indicated he did not desire to discuss the matter further because of a possible reprisal against him. Shortly after this conversation between Otepka and Holden, Reilly appeared in Otepka's office; said he heard Otepka had been having trouble with his telephone, and remarked that he had been having trouble with his phone too.

On May 14, 1963, Stanley Holden told Otepka that the room which he, Otepka, occupied contained a concealed listening device which enabled someone at a remote monitoring point to overhear telephone conversations as well as other conversations in the room. He said the installation of this device was ordered by Reilly because Reilly was personally embarrassed by information with which he was confronted in his appearances before the Senate Internal Security subcommittee, that Reilly was upset about Otepka's testimony before the subcommittee.

Holden said that the monitoring was being done under the direction of Elmer Hill, chief of the Division of Technical Services, and that the operation was known to Rosetti, who, as chief of the Division of Domestic Operations, was Holden's immediate superior. Holden added that Belisle had enlisted Otepka's assistant, Frederick Traband, to keep Belisle informed of Otepka's activities and any remarks that he made within the hearing of Traband. At about this same time Otepka received similar information from George Pasquale reiterating that Pasquale had told Otepka before.

On several occasions during the month of May, Otepka noticed that strange sounds were coming from his telephone although the receiver was in the cradle. The sounds were a humming noise, and the sound of voices—in other words, the telephone was broadcasting. Otepka concluded from all of these facts "that there was an organized campaign being directed against me, either to purge me or to embarrass me in some way in connection with my duties."

SEVERAL CLASHES

During the month of May 1963 Otepka clashed with Reilly and Belisle or Traband in connection with several personnel security cases.

In one case Otepka and Traband interviewed a prospective appointee concerning his alleged Communist activities, and Otepka recommended against his employment on the ground that he was a security risk. The applicant was cleared after Otepka was ousted.

Another case involved a prospective appointee to the staff of the United States ambassador to the United Nations. The ap-

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pointment was pushed by an assistant to Harlan Cleveland. Otepka insisted on full investigation of the individual's past activities, many of which were a matter of public record in the files of the House Committee on Un-American Activities; and in particular, Otepka urged a full investigation of an allegation that this man was involved in running arms and ammunition through the Congo to Angola in support of rebels who were seeking to drive the Portuguese from Angola. Otepka was overruled and the man was cleared and appointed.

In the third case, although the applicant was unsuitable, Traband argued that Otepka "should yield to reality because the applicant had strong political backing," that it was Otepka's "duty to accommodate the top." The applicant was rejected by the Office of Personnel as unsuitable.

A fourth case involved the wife of a deputy assistant secretary for Far Eastern affairs. The wife was an applicant for an important position in the Bureau of Intelligence and Research, specializing in Far Eastern affairs. In 1954 Otepka had considered the case of the husband and recommended that he be suspended in the interest of national security. Otepka based his recommendation on the applicant's notorious pro-Communist record on Far Eastern matters and the employment of him and his wife by the Institute of Pacific Relations, an organization which had been cited by the Senate Internal Security subcommittee as a group controlled by persons with Communist background and leanings.

The administrator of the Bureau of Security and Consular Affairs concurred with Otepka in 1954, but they were overruled. The man was not charged or suspended as a security risk. The individual's wife, who was in the department at the time, and whose record was equally bad, subsequently left the department voluntarily and was now, in May 1963, seeking to return as an intelligence specialist. Otepka objected but was overruled by Belisle and Reilly and the lady was appointed.

In two other cases in May 1963 Belisle signed security clearances for two applicants without notice to Otepka and without any proper investigation.

Full field pre-appointment investigations for all applicants and employees of the State Department occupying sensitive positions were required by law in the absence of a waiver signed by the secretary. Belisle had granted clearances to the two applicants without any full field investigations or waivers.

Having obtained the security files of the two applicants and ascertained these facts, Otepka wrote a memorandum for the record stating that he would accept no responsibility for the clearance of the two persons because he had not been allowed to participate in the clearance processes. He noted that the requirements of the law and the regulations had not been met.

Belisle responded with a scrawled note in blue crayon demanding the files. The note said "give them to me," followed by several exclamation points.

REILLY TESTIFIES

On April 25, 1963, Reilly testified again before the Internal Security subcommittee. Returning to the department late in the afternoon, he went to Otepka's office. He appeared to be upset. He told Otepka that Sen. Dodd "had given him a bad time," after he had testified that Otepka had voluntarily disqualified himself from further participation in the Wieland case.

He asked Otepka if he could confirm to Sen. Dodd or to the subcommittee that he had in fact withdrawn from the Wieland case. Otepka responded that if called as a witness he would testify precisely about his conversation with Reilly concerning his participation in the Wieland case.

Otepka felt it was not necessary to argue the matter with Reilly at that time, since he believed that Reilly well knew when he testified that Otepka had not in fact withdrawn from the Wieland case, and he believed further "that Mr. Reilly was a very devious person who had been working hard to discredit me or get rid of me in any way he could, and I felt it unwise and very foolish to confide in him that I—what I was going to say in the event I was going to testify before that committee again."

Shortly after April 25, 1963, Mr. Sourwine permitted Otepka to see the transcript of Reilly's testimony of that day. At this time Sourwine told Otepka that all of the senators who participated in the hearing believed that Otepka had told the truth, that he was a knowledgeable security officer who always was properly responsive to the subcommittee's questions, and he further informed Otepka that Sen. Dodd, who had interrogated Reilly closely and at length, thought that Reilly was lying and was being evasive.

Sourwine said that Otepka had always done his best to protect the State Department's interests, had made no criticism of his superiors and had respected the oath that had been administered to him. Sourwine concluded in effect that Otepka "now had a problem."

Reading the transcript of April 25, 1963, Otepka observed that Reilly testified that the Division of Evaluations had been operating inefficiently when Reilly got to the State Department and that Otepka was a bottleneck, that Otepka held many things and did not delegate enough authority, especially to Traband. No such complaint had ever been made to Otepka by Reilly or Boswell, either orally or in writing.

Otepka also read Reilly's testimony, in which Reilly swore that Otepka had voluntarily excused himself from participation in the Wieland case. Reilly also assured the subcommittee that the fact that the Department of Justice had declined to prosecute Wieland for false statements made no difference in the State Department's evaluation of the case. Otepka knew this was not a fact, and it subsequently developed that Belisle had Robert McCarthy prepare a written clearance predicated on the decision of the Department of Justice not to prosecute.

In appearance before the subcommittee on April 30, 1963 and May 21, 22 and 23, 1963, Reilly at one time or another repeated his testimony that Otepka had voluntarily withdrawn from the Wieland case. With respect to the appointments of the members of the Advisory Committee on International Organizations, Reilly testified that Otepka had given him information about only one of the prospective appointees.

He further testified he had not seen the Leonard Boudin letter in the *New York Times*, discussing the matter of security clearances for the staffs of international organizations, until Otepka showed it to him. He also swore that he, Reilly, had obtained and given to Otepka the draft report of the Advisory Committee, which reflected the Boudin proposals.

The facts were that Otepka had not voluntarily withdrawn from the Wieland case, that he had specifically and in writing directed Reilly's attention to the cases of three prospective appointees to the Advisory Committee, that Reilly had received the Boudin article from the Department of Justice and sent it to Otepka with a covering memorandum, and that Otepka had obtained the draft report and given it to Reilly, together with his comments on the contents of the report.

The effect of Reilly's testimony about these matters was, first, to justify the removal of Otepka from the Wieland case, and second, to absolve Reilly of any responsibility for questionable appointments to the Advisory Committee and from responsibility for failure to perceive the similarity between the recom-

mendations in the committee's draft report and the proposals of Leonard Boudin. It was Reilly's duty to correlate the Boudin proposals with the recommendations of the draft report; and having failed to do so, he attempted to pass the matter off by disclaiming knowledge of the Boudin letter and shifting the responsibility to Otepka.

By claiming that he had submitted the draft report to Otepka, he sought to give the impression that he had performed his duty, by alerting Otepka, whereas in fact Otepka had alerted him.

In his testimony of May 21, 1963, Reilly said that Otepka had submitted a memorandum making recommendations for short-form reporting on applicants, that these recommendations had been put into effect, and that Otepka had then testified before the subcommittee objecting to the procedure which he himself had recommended.

The fact was that Otepka had recommended short-form reports on clerical applicants alone, but that Reilly had ordered short-form reports on all non-derogatory cases of State Department applicants, a procedure which in effect tuned investigators into evaluators.

When this procedure came under attack before the Senate subcommittee as one involving bad security, Reilly by his testimony attempted "to convey the impression that what he had done was precisely what Mr. Otepka had recommended and therefore, that since he had depended upon Mr. Otepka, Mr. Otepka was at fault." In connection with what he described as Otepka's "recanting" of his memorandum on short-form reporting, Reilly testified further on May 21, 1963, that Otepka struck him as mentally unbalanced and emotionally overwrought.

Following Reilly's appearance before the subcommittee on May 23, 1963, Mr. Sourwine, chief counsel for the subcommittee, communicated with Otepka and asked Otepka to come to see him at his office. As a matter of convenience to Mr. Sourwine, the meeting between him and Otepka took place after Otepka's normal working hours but there was nothing clandestine or secretive about it; in fact, during the same period of time Mr. Sourwine and members of his staff were interviewing other State Department employees with the knowledge of the department. The interview with Otepka was in accordance with the subcommittee's usual practice in preparing for hearings.

In his interview with Otepka shortly after May 23, Chief Counsel Sourwine pointed out to him that there had been sharp conflicts between Otepka's testimony and that of Reilly. He mentioned the conflict with respect to the information Otepka had given Reilly about the members of the Advisory Committee on International Organizations, and showed Otepka marked transcripts reflecting other instances of conflict or apparent conflict. "And I told him that—I forget whether I wanted him to, or the committee wanted him to, but I was attempting to convey to him that it was up to him to put up or shut up—his boss in effect had called him a liar, and if he had any evidence to support what he had told us, I wanted him to bring the evidence in and put it in the record."

EVIDENCE PRODUCED

Otepka said he was sure he could support every bit of testimony he had given, and that he would attempt to produce the evidence to support it. Sourwine gave him copies of the transcript and had them marked to indicate the conflicts, and told him to traverse all of those points, be ready to testify further with respect to all of those points, when he was called back to the stand.

As a result Otepka prepared a memorandum with respect to Reilly's testimony, giving Otepka's comments and indicating the errors in Reilly's testimony. The statements in

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the memorandum were supplemented by several documents supporting the testimony Otepka had already given.

The memorandum and documents were turned over to Chief Counsel Sourwine by Otepka. The memorandum was keyed to the transcript of Reilly's testimony; that is, the comments in the memorandum were keyed to specific pages of the transcript of Reilly's testimony, and traversed Reilly's testimony on the points in dispute.

According to the letter of charges the typewriter ribbon used in producing Otepka's memorandum concerning Reilly's testimony was retrieved from Otepka's burn bag by the burn bag surveillance team on May 20, 1963. The letter recites that the ribbon was read "and the contents were reproduced" as Exhibit B in the charges. Exhibit B to the charges is in fact the department's own garbled version of the memorandum which Otepka submitted to Chief Counsel Sourwine.

Attached to Otepka's memorandum commenting on and rebutting Reilly's testimony was a five-page memorandum dated Sept. 10, 1962, from Otepka to Reilly on the subject of "Francis O. Wilcox, Arthur Larson, Lawrence Finkelstein, Marshall D. Seymour, Andrew Cordier, Ernest Gross, Harding Bancroft, Sol Linowitz."

IMPORTANT MEMO

This memorandum, which is State Department Exhibit 7, is the basis of Charge 1 against Otepka. It went to the heart of the most important conflict between the testimony of Reilly and that of Otepka. Specifically, it demonstrated that on Sept. 10, 1962, Reilly had received in writing from Otepka information about the eight individuals named in the memorandum, who were prospective appointees to the Advisory Committee on International Organizations staffing and for whom emergency clearances were desired by Harlan Cleveland. Reilly had testified that Otepka had alerted him to the case of only one of the eight individuals.

Also attached to Otepka's memorandum on Reilly's testimony was a copy of a memorandum dated Sept. 17, 1962, from Reilly to George M. Czayo, entitled "Processing of Appointments of Members of the Advisory Committee on International Organization Staffing." This memorandum, State Department Exhibit 8, is the basis of Charge 2 against Otepka.

HOW MANY NAMES?

It too was directly relevant to the issue being explored by the subcommittee with respect to the conflict between Reilly and Otepka. It demonstrated that Reilly not only had received and understood the information from Otepka about the questions raised with respect to the members of the Advisory Committee on International Organization Staffing, but that Reilly had dealt with the matter himself, by sending a memorandum concerning it to Mr. Czayo. The question of how many individuals on the list had been brought to Reilly's attention by Otepka was an important and material matter pending before the subcommittee.

Although the memorandum of Sept. 10, 1962, State Department Exhibit 7, and the memorandum of Sept. 17, 1962, State Department Exhibit 8, were classified "Confidential," the members of the Internal Security subcommittee and its chief counsel had been granted clearances for access to classified information, which entitled them to receive such documents.

The memoranda of Sept. 10, 1962 and Sept. 17, 1962 (State Department Exhibits 7 and 8) contain no investigative data. The only substantive data contained in the memorandum of September 10 (State Department Exhibit 7) consists of references to certain matters which had been mentioned in published reports or hearings of the Senate Internal Security subcommittee or which were other-

wise in the public domain, or available to the subcommittee.

The memorandum of Sept. 17, 1962 (State Department Exhibit 8) contains no substantive data whatever with respect to the prospective appointees, but relates for the most part to the procedural steps involved in their clearance.

SHORT VS. LONG FORM

Also attached to Otepka's memorandum on the Reilly testimony was a copy of a long-form report dated May 21, 1960, on one Joan Mae Fogltanz, an applicant for a clerical position in the Department of State. This document, State Department Exhibit 9, is the basis of charge Number 3 against Otepka. It was directly relevant to the conflict between Otepka and Reilly with respect to Otepka's recommendations for short-form reporting.

On Oct. 29 1962, Otepka had submitted a memorandum to Reilly expressing the view that in cases of applicants for clerical positions, such as young ladies fresh out of high school who had no employment history and whose backgrounds were impeccable, long-form reporting was unnecessary and a waste of time. Otepka had given Reilly the lengthy Fogltanz report as a "horrible example" of a long-form report, illustrating what he was talking about in his memorandum.

Nevertheless, over Otepka's objections, Reilly ordered that short-form reporting be adopted for all non-derogatory cases, including the cases of officer applicants. Thereafter Reilly had testified before the subcommittee that his order had only carried out Otepka's recommendation and that Otepka in his testimony before the subcommittee had repudiated his own memorandum to Reilly. In an attempt to support this testimony Reilly produced and turned over to Mr. Sourwine a copy of Otepka's memorandum to him dated Oct. 29, 1962.

The Fogltanz report, which Otepka had given to Reilly with this memorandum, demonstrated exactly what Otepka was talking about in the memorandum, and confirmed Otepka's statement that Reilly knew perfectly well what Otepka's recommendation had been.

In his memorandum prepared for Mr. Sourwine and the subcommittee Otepka commented at some length on Reilly's testimony about short-form reporting and Otepka's memorandum dealing with the subject.

In addition to the two documents relating to Reilly's testimony concerning the personnel of the Committee on Staffing International Organizations, and the Fogltanz report relating to his testimony on short-form reporting, Otepka attached to his memorandum various papers and documents that were relevant to other questions which were pending before the subcommittee and concerning which Reilly had testified. Otepka's memorandum also discussed these questions.

SOURWINE'S ROLE

The documents produced by Otepka, and specifically the documents referred to in Charges 1, 2 and 3, were directly relevant to questions posed to Otepka by the subcommittee. Had he failed to produce those documents, and particularly had he failed to produce the documents referred to in Charges 1, 2 and 3, he would have failed to respond fully to the questions posed by the subcommittee. Furthermore, documents containing similar information had in the past been furnished to congressional committees, and nothing had "been said about the Truman order [Directive of March 13, 1948] preventing it."

The investigation by the Senate Internal Security subcommittee, in which Otepka and Reilly were involved, was an investigation of security practices at the Department of State. The subcommittee was "trying to get at the facts with regard to the security situation in the department."

As chief counsel for the subcommittee,

Mr. Sourwine was responsible for preparing for the hearings by interviewing witnesses, arranging for their appearance, conducting the basic examination of witnesses before the committee, and doing any necessary research. In all of his dealings with Otepka, Mr. Sourwine acted pursuant to these responsibilities, in his official capacity as chief counsel of the committee, and on behalf of the committee.

Any request that he made of Otepka was a request of the Internal Security subcommittee. Moreover, everything said and done by Otepka was in response to such requests. He was not a volunteer witness, but one whose appearance had been requested by the subcommittee, who had been sent by the State Department to the subcommittee and who had testified with the knowledge of the department.

CODE OF ETHICS

Otepka did not take the matter of Reilly's false and misleading testimony up with his superiors, before submitting his memorandum and the attached documents to the subcommittee. In the light of the facts known to him he reasonably believed that for many months his superiors had engaged in or approved a campaign to harass, frustrate and discourage him so that he would abandon his key job in the department's Office of Security.

Taking the matter up through the chain of command would have required him to confide in some of the very superiors whom he believed to be engaged in the effort to purge him from the department. He knew from his long experience that employees of the department who reported on the misconduct of a superior through the chain of command were often pilloried while those guilty of misconduct were protected. In his judgment, based upon his experience, there "was a mutual protective society amongst those whose advice I might have sought."

In making his decision to submit information and documents to the Internal Security subcommittee, Otepka took into account the Code of Ethics for government service which is set out in House Concurrent Resolution No. 175, agreed to by the Senate on July 11, 1958.

This Code of Ethics includes a statement that every government employee should put loyalty to country and to the highest moral principles above loyalty to any party, person or government department. The Code was supported in the Senate by the then Majority Leader Mr. Lyndon B. Johnson, who spoke in favor of it. A copy of the Code was received by Otepka as an attachment to a State Department circular addressed to all department employees.

In his deliberations about what he should do with respect to Reilly's testimony and the subcommittee's requests for information, Otepka also gave consideration to the provision of 5 U.S. Code, Sec. 652(d) that "the right of persons employed in the Civil Service of the United States, either individually or collectively, to petition Congress or any member thereof or to furnish information to either House of Congress or to any committee or member thereof shall not be denied or interfered with."

In determining upon his course of conduct with respect to the subcommittee's request for information, Otepka also considered the question of whether or not his submission of this information would contravene what he knew or believed to be the accepted standard of conduct for employees of the Department of State.

He considered his proposed or contemplated course of conduct against the pattern which he believed to have been established by the conduct of State Department officers and employees which had been approved by the department. He "was familiar with many such cases, and [he] gave consideration to

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the conduct of those persons with which [he] was familiar and [he] noted that their conduct was excused."

EIGHTEEN CASES

Among these cases in which infractions of regulations or other misconduct were approved or condoned by the department were the following:

(1) The case of John Stewart Service (supra) the Foreign Service officer who admitted that he had furnished 18 documents, some of them classified "Secret," to Philip Jaffe, the publisher of *Amerasia* magazine, a person on whom there was a considerable record of Communist activities and affiliations. Service was honorably retired.

(2) The case of Elmer Dewey Hill (supra) whose misconduct in Warsaw was condoned and covered up by Reilly.

(3) The case of William Wieland (supra) whose misconduct by way of false statements, misrepresentations and concealment of information was condoned by the department.

(4) The case of Charles Lyons (supra) who as a security officer in Athens, Greece, had failed to report a large number of security violations but who nevertheless was appointed deputy chief of the Division of Evaluations.

(5) The case of the presidential nominee (supra) who had publicly assaulted his wife and strewed her clothing on the lawn, over the shrubbery and in the street.

(6) The case of Irving Swerdlow (supra) who had been dismissed as a security risk by the Mutual Security Agency, but was appointed to a position in the State Department.

(7) The case of the Foreign Service officer (supra) who, while stationed in Mexico City and again while on duty at Caracas, Venezuela, had been guilty of serious sexual misconduct, including a liaison with the wife of the ambassador of another nation, but whose conduct had been condoned.

(8) The case of Robert McCarthy (supra) who had withheld information from his reports to his superiors concerning the loss of classified documents by the American ambassador at Caracas, but who became a trusted lieutenant of John F. Reilly.

(9) The case of Seymour Janow (supra) who was appointed to high office without resolution of allegations that he had been involved in an illegal conflict of interest.

(10) The case of the security officer stationed in Moscow who was enticed to her apartment by a Russian woman. The woman turned out to be a KGB agent. Using concealed cameras, the Soviet Secret Police photographed the security officer and his Soviet companion, in bed, both being in the nude. The security officer was then confronted with the photographs and an attempt was made to induce him to spy for the Soviets. He rebuffed the attempt and reported his misconduct to his superiors. Although he had exposed himself to the most elemental recruitment tactics, known to even the greenest novice, he was not disciplined.

(11) The case of a security officer stationed in an Eastern European country. He was married to an American, who accompanied him. He gave lectures to his associates, instructing them to avoid any personal relations with foreign nationals. Nevertheless, he openly consorted with a local woman. His conduct was observed by his associates and reported to superiors. Subsequently, when his wife divorced him for his misconduct he requested the department's permission to marry his alien paramour and permission was granted, notwithstanding the fact that there was information indicating that the woman was a foreign agent. He was not disciplined, but continued as a security officer.

(12) The case of a Foreign Service officer, formerly a security officer, who owned two automobiles when he was transferred to a new post. Although entitled to have only one

automobile shipped at government expense, he had the second automobile concealed in a lift van and represented it as household furnishings on the invoice. His case was referred to the Department of Justice for prosecution and he was not disciplined, except that he was required to pay for the transportation of the second automobile.

(13) The case of a Foreign Service officer who admitted to the security officers of the department and to the department's medical authorities that he had engaged in homosexual acts. The department's medical officers found him unfit to serve abroad because in their professional judgment his homosexual tendencies made him a potential security risk. He was not disciplined, but again sent abroad and assigned to a critical post behind the Iron Curtain.

(14) The case of a Foreign Service officer who, on his application form and in interviews with department personnel, concealed the fact that he had been a member of the Young Communist League and of the Communist party. He is still employed in the State Department.

(15) The case of a Foreign Service officer stationed in an Eastern European post who admitted homosexual tendencies and other personal misconduct but was given responsibility for supervising Marine guard personnel at the American Embassy. His negligence permitted foreign agents to have access to classified reports at the embassy. He received normal promotions in the Foreign Service and is still in the department.

(16) The case of a Foreign Service Officer on duty in the department who borrowed money from the State Department Credit Union and forged the endorsement of a fellow employee, a lady, to his application for the loan. This individual was given an important assignment in the White House.

(17) The case of a Foreign Service officer who, while station in an Eastern European country, fathered a child out of wedlock by a national in that country. Boswell, who was then director of the Office of Security, selected this man to be a security officer at a Far Eastern post.

(18) The case of a Foreign Service officer who sexually violated his own daughter but was never disciplined, and in fact was later designated as a part-time security officer at a post which did not have a full-time professional security man.

PATTERN ESTABLISHED

All of the foregoing cases were within the personal knowledge of Otepka and they all occurred in recent years, at or about the time of Otepka's difficulties with Reilly. Otepka was familiar with many other cases of a similar nature, in which the conduct of State Department employees had not resulted in disciplinary action.

These cases established a pattern and standard of conduct upon which Otepka was entitled to base his conclusion that his action in furnishing information and documentation to the Senate Internal Security Subcommittee was not a breach of the standard of conduct expected of an officer of the Department of State.

Otepka requested John R. Norpel, a member of his staff and a former FBI inspector, to compile pertinent data for use by Otepka in substantiating his testimony before the subcommittee. Norpel reported to Otepka that he had mentioned the assignment to Rosetti, who in turn had reported it to Reilly, and that thereafter Reilly had told Norpel "Otepka is a nut—I came here to do a job and I am going to do it."

Later, in a conversation between Norpel, Robert McCarthy and Rosetti, McCarthy asked Norpel, "Why is Otepka fighting, what is his price to quit? Every man has a price." Norpel replied that no one could buy Otepka for any price and that his reason for fight-

ing was to remedy wrongs and to uphold his principles.

Early in June 1963 Reilly again evinced an interest in Otepka's activity with respect to Harlan Cleveland, by sending Otepka a memorandum concerning Cleveland's security file and stating that Otepka had taken no closing action on Cleveland's security clearance. Reilly also stated that Otepka had not answered Beilsie's memorandum to Otepka dated Jan. 15, 1963, on the Cleveland case. Reilly accused Otepka of dilatory tactics.

Otepka replied with documentation proving that he had answered Beilsie's memorandum within seven days, and he pointed out that Cleveland had been cleared by Secretary Rusk on Aug. 11, 1961, thereby closing the case. Otepka added that if Reilly wanted to know why he, Otepka, as the chief evaluator, had Cleveland's security file in his possession he would be happy to explain it to Reilly. Reilly did not ask for the explanation.

On June 25, 1963, Otepka observed that one of his subordinates, Joseph Sabin, had put aside certain work that Otepka had assigned to him to be handled on a priority basis and was working on the security file on Seymour Janow. The next day, noticing that Sabin again was working on the Janow file, Otepka asked what it was that he was evaluating in that case.

Sabin replied that he had been instructed by Reilly to prepare a chronology of certain events in the case. Otepka noticed that Sabin had such a chronology on his desk. Otepka took the chronology and the file to his desk, where he saw that one item in the chronology made a false reference to Otepka. Otepka handed the chronology to his secretary and asked her to make a copy of it for him.

Shortly thereafter Reilly burst into Otepka's office and shouted to him, "When I assign a case to a member of your staff, I do not expect you to interfere." He accused Otepka of taking the chronology from the Janow file and asked if Otepka had it in his possession. When Otepka acknowledged that he had it, Reilly demanded that he give it to Reilly immediately. Otepka complied. Reilly then asked how many copies of it he had reproduced. Otepka said he had not reproduced any but had intended to do so.

Reilly took the file and the chronology and left Otepka's office. Within a few minutes two porters came to Otepka's office and removed Otepka's Thermofax machine. One of them told Otepka that he was removing the machine on Reilly's instructions.

On two occasions during May and June 1963 Otepka asked Traband whether he, Traband, was keeping Otepka under surveillance. On the first occasion, in May, Traband denied that he had Otepka under surveillance and this ended the matter. On the second occasion, in June 1963, Traband accompanied his denial with an angry outburst to the effect that Otepka had no right to question his integrity. It subsequently appeared that Traband was in fact acting at that time as a member of Reilly's burn bag surveillance team.

On the morning of June 27, 1963, Reilly sent for Otepka and in the presence of Beilsie handed Otepka a memorandum stating in part:

"Effective immediately I am temporarily detailing you to devote your full time and attention to preparing guidelines for evaluating and developing recommendations to me relative to updating and reviewing the Office of Security Handbook. During the course of this temporary detail, you are relieved of your present official responsibilities. You will, for the duration of this assignment, occupy Room 38A05. Such stenographic and/or typing assistance as you will require to carry out these assignments will be made available

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as you make such needs known to Mrs. Catucci or Mrs. Mitchell."

At the same time Reilly announced to the Division of Evaluation in another memorandum that Belisle would take over Otepka's duties as chief of the division. After handing Otepka the memorandum relieving him of his duties, Reilly and Belisle accompanied Otepka back to Otepka's office. When they arrived at Otepka's office five security officers at once followed, obviously by pre-arrangement. These officers, all members of Rosetti's staff, were Rosetti himself, Robert McCarthy, Russell Waller, Joseph McNulty and Frank Macak.

Reilly asked for the combination to all of Otepka's safes and when they were produced the five security officers proceeded to change all the combinations of the safes and file cabinets and to close and lock them.

This operation, which took place in view of Otepka's subordinates, was supervised by Reilly and Belisle. While it was going on Otepka sat at his desk. For a while Reilly stood guard over Otepka, then he motioned to Rosetti to take his place and Rosetti did so. Finally Otepka told Rosetti that if he had no objection Otepka was going to lunch. Rosetti said he had no objection and Otepka went.

FILES RESTRICTED

Returning from lunch Otepka found his secretary, Mrs. Powers, in tears. She informed Otepka that Reilly had called her in and handed her a memorandum notifying her that she was being transferred to the Washington Field Office where she would be transcribing from dictaphone cylinders. This was a low-level clerical job far beneath her capabilities.

Otepka also learned that Norpel and Hughes, two of his associates, had been detailed by Reilly from the Division of Evaluations to the Investigations Division located in another building. Reilly informed them that they would be assigned to investigative duties.

After learning of the re-assignment of Mrs. Powers, Norpel and Hughes, Otepka went to Reilly's office and asked for an explanation. He found Belisle with Reilly. Reilly at first refused to give any explanation but finally said something to the effect that when he first came on board he had emphasized to Otepka "the need of institutional loyalty."

Otepka replied that he recalled no such lecture, but he wanted Reilly to know that he never had and never would subordinate loyalty to his principles and to his country to loyalty to any institution.

Otepka then asked whether he were to be permitted access to classified information. Reilly said the nature of Otepka's job did not require such access. Otepka asked if Reilly was terminating his security clearance—which would have required a hearing—and Reilly said no, repeating the word "no" several times.

Otepka said there were materials in his office that would be relevant to his work on the handbook. Reilly replied that Belisle would accompany Otepka to his office and assist him in identifying the material that he could use. Belisle did accompany Otepka to his office and spent the rest of the day in going over Otepka's material and deciding what Otepka could keep.

On the following day Belisle announced that Reilly was leaving on a vacation, that he, Belisle, would be acting director of the Office of Security and that he was designating another man, Raymond Laugel, to sit with Otepka during the screening of Otepka's material. Mrs. Powers, Otepka's secretary, also assisted in this work, until Belisle came in and told her to "pick up your things and get out."

Otepka's safes contained many unique and valuable records and files containing personal security data and information. These records had been collected and preserved by

Otepka over the years. Many of them related to persons currently occupying key posts in the Department of State.

Otepka pointed out to Belisle that these records were particularly useful to evaluators in assuring that all relevant information was included in reports, investigations and research data on applicants and employees. Belisle responded that the records were duplications and unnecessary material that need not be kept around cluttering file cabinets; that if an evaluator needed something he could go to a central security file and rely only on that.

Files and records of Norpel and Hughes were also impounded by Reilly on June 27. The combinations of their safes were also changed and the safes were locked. Norpel, however, was permitted to return and retrieve his cigarettes from his safe.

Hughes and Norpel were assigned to routine investigations of low-level clerical applicants. Hughes had been one of Otepka's top evaluators, having been of great assistance in obtaining material on the Wieland case. Norpel who had served in the FBI for 13 years, including duty as an inspector, was also a top evaluator. Mrs. Powers, who had been Otepka's secretary for 10 years and was an expert stenotypist, was put to work transcribing from distaphone cylinders.

Other members of Otepka's special staff, Hite, Gardner and Loughton, remained in the Division of Evaluations for the time being, but were transferred to the Bureau of Inter-American Affairs as administrative officers in March 1964. Loughton was informed by Belisle that there was no future for him in the Office of Security and he therefore accepted an assignment as a consular officer in Mexico.

Gardner accepted a similar assignment after finding that there was nothing for him to do in the Bureau of Inter-American Affairs. Hite likewise found no work for him in the Bureau of Inter-American Affairs, and he "just sat around reading newspapers and waiting for the day to pass."

Reilly testified in this hearing that Hughes and Norpel were transferred because "they were close companions of Mr. Otepka" and he wanted to get them out of the Division of Evaluations. He testified also that he knew that Norpel, Hughes, Hite, Loughton and Gardner were all friendly to Otepka or close to him.

On June 27, 1963, instructions were issued that no files from the file room were to be charged to Otepka, Norpel, Hughes or Mrs. Powers. On July 2, 1963, Traband issued instructions that Otepka was not to obtain any file or material from the Evaluations Division. On July 23, 1963, Belisle orally instructed Otepka that he was not to enter the offices of the Division of Evaluations, and that if members of that division wanted to talk to Otepka they could come to the office to which he had been transferred. Later in the day Belisle issued a memorandum to this effect. The memorandum read:

"This will confirm my instructions given to you on July 23, 1963, that you are not to have access to the space occupied by the Division of Evaluations. In the event that you require any information for the performance of your detail, you may discuss it with myself or Mr. Reilly and we, after determining the need, will make the necessary arrangements."

On July 22, 1963, the day before this order was issued, Belisle instructed the employees of the Division of Evaluations, Special Review Branch, that no information relating to any case being handled in that division should be given to Otepka and no cases should be discussed with him.

A 10 BY 14 OFFICE

Otepka was assigned to a small room some distance from his former office. The room was located on a blind corridor in the Office

of Security area, directly across the hall from the electronics laboratory containing all of the department's equipment for electronic intelligence and surveillance operations.

The office had one telephone, which was an extension from the telephone located in an adjoining office where the call bell was also located. When Otepka had an incoming call it was necessary for a young lady in the adjoining office to come in and tell him, and he then would take the call on his extension.

The office, which was approximately 10 by 14 feet, contained two desks, bookcases and file cabinets. Mail reached Otepka through the person next door. None of the usual departmental circulars and regulations, and no classified material whatever, were sent to Otepka. Personal mail addressed to him, including some registered mail, was sometimes opened before it reached him.

For about a year after June 27, 1963, Otepka had no secretary. One June 27, 1963, Reilly had offered the services of his secretary, Mrs. Catucci, the lady who had theretofore cursed Otepka and torn her hair in his presence, but Otepka, not unnaturally, declined to avail himself of her services. In August 1963 Reilly suggested that Otepka might use the services of a temporary summer employee, but Otepka felt that such an employee was not the kind of person he cared to use. The services of Elmer Dewey Hill's secretary were then tendered to Otepka but were also declined.

Finally Otepka was given a dictaphone but without a transcriber, so that his dictation had to be transcribed elsewhere. A transcriber was later supplied to him, but after a short while it was taken away.

Otepka's exile to his little room under these conditions has continued to the present day. Protests by him against his working conditions have been unavailing.

On July 29, 1963, Otepka learned that agents of the Federal Bureau of Investigation were interviewing his former associates, Loughton, Norpel, Hite, Hughes, Burkhardt and Gardner. Otepka was informed by these former associates that the FBI agents had questioned them regarding their knowledge as to whether Otepka had furnished classified data to an unauthorized person, namely, J. G. Sourwine, chief counsel for the Senate Internal Security subcommittee. The former associates denied that they had any such knowledge.

They were also asked if they had seen transcripts of Reilly's testimony before the Internal Security Subcommittee and they denied having seen such transcripts, or that they had any knowledge of Otepka's having seen the transcripts.

Otepka's former secretary, Mrs. Powers, was also interviewed by the FBI, and she informed Otepka that the agents questioned her about a portion of an FBI report on Harlan Cleveland and a memorandum prepared by Otepka with respect to Charles Lyons, several memoranda concerning the appointment of certain persons to the department's Advisory Committee on International Organizations, and a note addressed to Otepka by Mrs. Powers setting out information provided to her by Mrs. Schmelzer to the effect that Mrs. Schmelzer suspected that Otepka's telephones were tapped. Mrs. Powers told the agents that all of these papers had either been prepared by Otepka or were in the safe.

On Aug. 12, 1963, Otepka was recalled as a witness by the Senate Internal Security subcommittee, his appearance having been requested by the subcommittee through the office of the assistant secretary of Congressional Relations.

On this occasion Otepka produced his memorandum with attached exhibits, which he had prepared for submission to the committee, and the memorandum with the exhibits was received in evidence and made a

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part of the official record of the Internal Security subcommittee.

The transcript of Otepka's testimony on this occasion, together with the text of his memorandum and attached exhibits, is printed in Part 20 of the transcript of the subcommittee's hearings, page 1699-1758, and has been received in evidence as Appellant's Exhibit A in this hearing. The transcript reflects that Otepka testified in part:

"Mr. Sourwine: Mr. Otepka, are you aware that Mr. John Reilly, in his testimony before this committee, controverted many statements previously made by you when you testified?

"Mr. Otepka: Yes; I was given to understand that it did.

"Mr. Sourwine: Did you have an opportunity to examine Mr. Reilly's testimony, the transcript of his testimony?

"Mr. Otepka: Yes, sir.

"Mr. Sourwine: Did I furnish you with a copy of this testimony and ask you to prepare a memorandum of reply covering point by point all of those instances in which you felt Mr. Reilly's testimony was inaccurate or untrue?

"Mr. Otepka: Yes, sir.

"Mr. Sourwine: Did you prepare such a memorandum?

"Mr. Otepka: I did, sir.

"Mr. Sourwine: You prepared it yourself?

"Mr. Otepka: Yes, sir; I did.

"Mr. Sourwine: Is this it?

"Mr. Otepka: That is the memorandum I prepared.

"Mr. Sourwine: That memorandum is accompanied by certain exhibits Nos. 1 through 13?

"Mr. Otepka: Yes, sir; which were intended to be used by me.

"Mr. Sourwine: The exhibits were furnished by you in connection with the memorandum for the records of this committee?

"Mr. Otepka: The exhibits were intended to be used to refresh my recollection in connection with my forthcoming testimony before this committee of which I have previously been apprised."

On Aug. 14, 1963, Otepka was called to the field office of the Federal Bureau of Investigation to be interviewed by two agents. The interview lasted through the afternoon of August 14, all day on August 15, and throughout the morning of August 16. Otepka was advised at the outset that he was being investigated to determine whether he had been guilty of violations of the Espionage Act, a criminal statute.

Among other things, he was asked whether he had turned over to Mr. Sourwine certain documents which had been in his safe, including memoranda or reports on Seymour Janow and Harlan Cleveland. He denied having turned these papers over to Sourwine.

At the conclusion of the interview he signed the statement which is attached to the charges as Exhibit A. Otepka freely answered all the questions the agents asked him, did not conceal or attempt to conceal anything, and told the truth, because he felt he had nothing to conceal. His written statement, Exhibit A, attached to the charges, was the truth. He admitted turning over documents to Mr. Sourwine, including those referred to in the charges.

Reilly had discussed Otepka with Mr. Alan Belmont of the FBI at some time prior to June 27, 1963, while the surveillance of Otepka's burn bag was going on. According to Reilly he went to the FBI at that time because a summary sheet or a reproduction of a summary sheet from an FBI report relating to Harlan Cleveland had been found in Otepka's burn bag, and it appeared to Reilly "from this reproduction of an FBI report, or indication of it, that there might have been a mishandling of it, and I wanted then to know, and I felt it should be looked into." According to Reilly, at that time, "Mr.

Belmont merely, thanked me for the information."

In the latter part of July 1963 Reilly conferred again with the FBI; they wanted to know what he knew about Otepka and who might be interviewed in their investigation.

On Aug. 14 and 15, 1963, pursuant to instructions from William J. Crockett, deputy under secretary of state for administration, Reilly issued written instructions to all personnel of the Office of Security that they were not to appear before the Senate Internal Security subcommittee, or have any contacts with or interviews by members of the subcommittee staff, without clearing in advance with Crockett personally.

While he was being interviewed at the offices of the FBI on the morning of Friday, August 16, Otepka received word through one of the FBI agents that his presence before the Internal Security subcommittee was requested, and he did appear and testify that afternoon. As he had spent the afternoon of August 14 and the entire day of August 15 in the FBI offices, he had not received the Crockett-Reilly orders of August 14 and 15 and did not receive them until the following workday, Monday, Aug. 19, 1963.

On July 29, 1963, in the course of his testimony before the subcommittee, Belisle was asked whether he had any information concerning the interception of conversations in Otepka's office. He replied that he did not. On Aug. 6, 1963, Reilly appeared before the committee and was asked whether he had ever engaged in or ordered the bugging or tapping or otherwise compromising telephones or private conversations in Otepka's office. He answered in the negative.

The charges against Otepka were served upon him Sept. 23, 1963.

On September 30 Stanley Holden informed Otepka that his present office (Room 38A05) was under "technical surveillance," meaning that the telephone was adjusted to intercept conversations in the room while the receiver was both on and off the cradle. Holden said the telephone operations were directed by Elmer Hill, who had "bugged" the telephones of other employees, including the phone of Holden himself. This information was confirmed to Otepka on October 2 in a conversation with George Pasquale.

On Oct. 4, 1963, Sen. Thomas Dodd, vice chairman of the Senate Internal Security subcommittee, delivered to Secretary Rusk a letter in which he stated that the subcommittee had knowledge of the tapping of Otepka's telephone, how it was done, and who did it.

Reilly suspected that Holden had given information to the Internal Security subcommittee about the tapping of Otepka's telephone. Accordingly, he sent Joseph Rosetti and Robert McCarthy to see Holden at Holden's house.

While there McCarthy questioned Holden about his knowledge of leaks of information to the subcommittee concerning the tapping of Otepka's telephone. In the course of the conversation McCarthy became loud and abusive and shouted at Holden, saying in effect that he was going to get Holden if Holden had been responsible for the leak and would not so inform him.

He asked Holden if he was acquainted with George Pasquale and if he had given Pasquale any information about the tapping of Otepka's telephone. He reminded Holden of his "loyalty, particularly to Joseph Rosetti." This incident occurred in October 1963.

On Nov. 5, 1963, Sen. Dodd stated on the floor of the Senate that the committee had evidence that Otepka's phone had been tapped. He mentioned the possibility of prosecutions for perjury of witnesses who had denied that the tapping occurred. The next day, Nov. 6, 1963, Reilly and Belisle addressed letters to the subcommittee, express-

ing a desire to "amplify" their previous testimony about bugging and wiretapping.

On Nov. 14, 1963, Belisle appeared before the committee and admitted that contrary to his previous denial he did in fact have specific information about the compromising of Otepka's telephone. On Nov. 15, 1963, Reilly appeared and admitted that his previous denials, with respect to the compromising of Otepka's telephone, had been untrue.

Shortly after his November appearance before the subcommittee Reilly resigned from the State Department by request. He left the payroll in February 1964. On Sept. 1, 1964, after a period of private practice, he became a trial attorney with the Federal Communications Commission, in which capacity he is still employed. Belisle is still employed by the Department of State.

CONCLUSION

The facts that have been recited are clearly established by the evidence. They speak for themselves so eloquently that extended argument and discussion are unnecessary.

Beginning in 1960 there was a schism between Otepka on the one hand and his superiors in the Department of State on the other, caused by Otepka's insistence upon the observance of sound and proper security practices, and his refusal to approve the employment or retention of persons of dubious character and background.

This schism was not a mere disagreement about matters concerning which reasonable men might properly differ. The cases that have been described establish a pattern of deliberate attempts on the part of Otepka's superiors to disregard or violate the security regulations and sound and proper security practices.

The evidence demonstrates that Otepka resolutely and consistently opposed these attempts and that his opposition earned him the animosity of his superiors. No other reasonable conclusion from the facts is possible.

It is not reasonable to conclude, as may be suggested, that Otepka fell into disfavor because he was inflexible and opinionated. His magnificent record and reputation, built up and acquired over the years prior to 1960, belie any such suggestion. Surely a man of his demonstrated ability, integrity and accomplishment did not become overnight an incompetent sorehead, constitutionally unable to work in harmony with his superiors, and consistently wrong.

Nor is it reasonable to conclude that the animosity of Otepka's superiors was produced only by the fact that he furnished information to the Senate Internal Security subcommittee. His cooperation with the subcommittee was a mere excuse, seized upon in an attempt to justify his removal from office.

In this connection it will be remembered that Reilly admitted in this hearing that so far as he knew Otepka had done nothing wrong when on March 13, 1963, he, Reilly, instituted his extraordinary surveillance of Otepka.

It is plain that Otepka was an impediment to those in the Department of State who were not in sympathy with the security system and who were determined to disregard or circumvent the security regulations. In furtherance of this purpose they resolved to purge Otepka by fair means or foul. They finally resorted to the tactics of the secret police and the device of synthetic charges.

PRIVATE VENDETTA?

It may be suggested that the measures taken against Otepka by Reilly and Belisle were the result of a private vendetta undertaken by them without the knowledge or approval of their superiors. The suggestion does not withstand analysis.

It is obvious that the conflict was not between Otepka on the one hand, and Reilly and Belisle on the other, but between Otepka and those in high places whose actions

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Otepka was properly attempting to restrain. Reilly and Bellsie were only the instruments of management policy.

It is not reasonable to believe that their treatment of Otepka did not have the approval and support of their superiors. By the same token, it is not reasonable to contend that Otepka should have appealed from Reilly and Bellsie to those same superiors.

No claim has ever been made that Otepka has at any time failed to tell the truth, either in his appearances before the Senate Internal Security Subcommittee or in his statement to the Federal Bureau of Investigation, or in his testimony at this hearing.

Moreover, it cannot be denied that in giving to the Senate Internal Security Subcommittee the documents involved in the charges against him he was actuated by the highest motives. Specifically, he was correcting Reilly's false testimony; more generally, he was fulfilling his duty to assist the committee in its investigation by telling the truth. He was not a volunteer witness but one who had been regularly and properly summoned by the committee.

In view of the circumstances it is difficult to understand the contention that he conducted himself "in a manner unbecoming an officer of the Department of State," that his actions constituted "a breach of the standard of conduct expected of an officer of the Department of State," and that his dismissal is therefore justified. Assuming that his production of documents was a technical violation of some directive or regulation—which we do not concede—it is plain that many more serious derelictions on the part of officers of the Department of State have not resulted in the dismissal, but rather have been condoned.

The charges against Otepka are a make-weight, contrived in an attempt to destroy an honorable man who has done no more than his duty. The charges should be dismissed and Otepka should be commended for his actions and restored to duty.

Respectfully submitted,

ROGER ROBB,
Attorney for Otto F. Otepka.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. FANNIN. I yield.

Mr. GOLDWATER. Mr. President, I have been interested in this case ever since it first began. I felt all along that a grave injustice had been done Mr. Otepka. I think that we have the opportunity here today to change those injustices and bring back some justice.

I have not been amused, because it is difficult to be amused by people who write in a vicious way by trying to insinuate, as some of our large eastern newspapers have been doing, that something is wrong with the man.

We keep hearing references in the debate here today to the days of McCarthy, as if we are to assume that McCarthyism implies guilt by association and so forth.

I can recall the terrible furor the New York Times put up about McCarthyism. Yet, they are practicing it in this case.

I remember how upset the Washington Post became because Joe McCarthy and McCarthyism became evil terms. Yet, today we see the same thing going on.

This man has not been tried by the Senate. He has not been tried by any proper court of justice. He has been tried in the pages of our newspapers by some honest and some dishonest columnists, some of whom have a very consistent record of never being accurate.

Yet, I am very pleased to read in the report of the nomination of Otto Otepka a few things from other sources. The New York Daily News on March 21, 1969, in an editorial entitled "Justice For Otepka," said:

Mr. Otepka, as a State Department security officer, was a victim of a departmental vendetta of the most contemptible kind—because he gave information to the Senate Internal Security Subcommittee headed by Senator James O. Eastland (Democrat-Mississippi). He was relegated to a meaningless State job.

The President now seeks to grant Otepka a measure of belated justice. As was to be expected, professional "liberals" are trying to wreck this Presidential effort—with the other New York morning newspaper leading the snapping, snarling pack.

The Senate can best rebuke these gentry by confirming the Otepka nomination forthwith. And Congress could do nothing better, we believe, than to pass a new subversive activities law reversing the Earl Warren Supreme Court decisions which have clipped so many of the SACB's original claws.

Mr. President, the April 8, 1969, issue of the Stars and Stripes, under the by-line of Vera Glaser, carried this assertion:

Otepka's two decades of experiences in the field would make him, if confirmed, the only Board member with the credentials to manage a wide-ranging evaluation operation.

Mr. Clark Mollenhoff, a Pulitzer Prize-winning reporter known for objectivity and honesty had this to say in part among other comments of his appearing in the report:

Despite the care with which Otepka related his case, I had difficulty in believing it was as one-sided as it appeared. I made every effort I could to determine if the facts were glossed over or omitted by Otepka or the Senate committee.

But there was no hint from anyone that Otepka was involved in either subversion or crime * * * No one could or would cite a case of irresponsibility or lack of balance in any Otepka evaluation * * *.

Mr. President, I think it is good that in the traditional American way this is being finally brought out to the American public.

I know that my mail reflects overwhelming support for Mr. Otepka and represents also the wish to have an opportunity to say thanks to a man who had the courage to do what was much needed at the present time; namely, supply the papers that proved him to be innocent and at the same time brought out the facts that many people had felt to be true, that there was something in the State Department not just quite right in the matter of personnel there.

I am proud to join with my colleagues in the Senate in urging a favorable vote on Mr. Otepka's nomination after we have roundly and soundly defeated the motion of the Senator from Ohio.

Mr. MURPHY. Mr. President, I join with my colleagues in enthusiastically endorsing the nomination of Otto Otepka. I, too, have had some experience in these matters. I have gone to the trouble of doing a little research to find out exactly what happened. Much of it has already been covered. I hope my colleagues will bear with me for a few moments if I repeat to some extent what

has already been said. There is great conviction.

Mr. President, any fairminded person who will take the trouble to do the research necessary to gain an understanding of the facts in the Otepka case can hardly fail to come speedily to the conclusion that Mr. Otepka could not in good conscience have done anything but what he did.

All of the facts in the case are available to anyone who will take the time to read. I propose to discuss just one aspect of the case, and for the benefit of anyone who wants to go more deeply into the matter, let me say the documentation for my statements here today will be found in part 7 and 20 of the hearings of the Internal Security Subcommittee on State Department Security, 1963-65, and in part IV of the report of the same Subcommittee on State Department Security, and in the legal brief filed by Mr. Otepka's counsel, which was printed in the CONGRESSIONAL RECORD of December 14, 1967, beginning at page H17048.

What I want to make clear here today is the background of the particular information furnished by Mr. Otepka to the Internal Security Subcommittee, which was the basis for the only three charges against Mr. Otepka, out of 13 charges originally made, which the State Department did not withdraw.

On July 30, 1962, the New York Times printed a long letter to the editor dated 6 days earlier and signed by a Leonard Boudin. Mr. Boudin is a lawyer, of sufficient notoriety, I believe, to be known to the Times management. He was a lawyer with scores of clients. He was well known as a lawyer who over the years had achieved the reputation of defending many people who had been involved or who had been apparently friendly toward the Communist cause. Among those he has represented were secret American Communists who had colonized the United Nations, during 1945 and 1946, and who invoked the fifth amendment before the Senate Internal Security Subcommittee. Mr. Boudin also represented the Communist Party U.S.A. in proceedings before the Subversive Control Board.

In his letter to the Times, Mr. Boudin complained that President Eisenhower's security screening procedures for employees of international organizations such as the U.N. were too harsh, and should be relaxed. Mr. Boudin explained he was writing to the Times because, he said:

The public is not aware that the careers of many devoted and brilliant international civil servants were destroyed in the hysteria of the 1950's.

He also complained that information in congressional files was used against these persons.

In due course, a clipping of Mr. Boudin's letter to the Times was routed to Mr. Otepka's superior, John F. Reilly, who passed it on to Mr. Otepka on August 3, 1962, without comment. Mr. Otepka, noting that the letter praised one man who had just resigned as executive assistant to the Secretary General of the U.N., retained it for appropriate evaluation. The letter coincided with data received

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by Mr. Otepka a few days earlier, advising him that the Assistant Secretary of State for International Organization Affairs had proposed, after a discussion with Under Secretary of State George Ball, the formation of a committee within the State Department to be known as the Advisory Committee on International Organization Staffing. This committee was to prepare procedures for "strengthening" U.S. influence in the staffing policies of international organizations.

At the outset the Under Secretary personally selected eight persons to serve on the committee. Later he added two more as replacements.

The Under Secretary requested that all the persons selected be brought into the Department of State under a waiver of security investigation.

Here we have the ludicrous situation of those who were to write the rules for security checks being brought into the Department without being submitted to any security checks themselves.

Due to extensive research undertaken by Mr. Otepka during the Eisenhower administration, while on an assignment dealing with persons involved in loose security practices, Otepka had studied and surveyed previously hidden material which was available, and he found that the security files of three of the nominees contained unresolved derogatory information of long standing which, under the regulations of the State Department, needed to be fully resolved by a current FBI investigation and State Department evaluation, before the appointment of the individuals to positions in the Department.

Mr. Otepka's superiors, who were seeking primarily to accommodate the Under Secretary of State, disagreed with Mr. Otepka's desire for a preappointment investigation. They prevailed. The result was that these three members of the Cleveland Committee, about whom Mr. Otepka was principally concerned, entered on duty without the required investigation. Thereafter, under the protective influence of the Under Secretary of State and his helpers in the Department's Office of Security, the committee set about its task, allegedly to improve U.S. security procedures to apply to Americans employed by international organizations.

In February 1963, Mr. Otepka obtained a draft report embodying the findings and recommendations of the committee. The report contained the endorsements of the three men in question, among others. In making his analysis of this report, Mr. Otepka opposed the committee's recommendation. The recommendation was similar to the recommendation made earlier by Mr. Boudin, in his letter to the New York Times, that the requirement for a full background investigation before appointment to a U.N. agency be eliminated. Mr. Otepka furnished his comments to Mr. Reilly, who apparently ignored them and did not transmit them to the Under Secretary involved.

Because the security procedures which the Under Secretary's group sought to strike from a Presidential order had been mutually developed by the execu-

tive branch and the Senate Internal Security Subcommittee, and since Mr. Otepka was already under a summons to testify regarding all security practices, he informed the subcommittee of the proposed changes and why he opposed them: In his judgment, the elimination of the security checks in advance of appointments to U.N. agencies would weaken rather than strengthen security operations.

I must say that I heartily agree, because, having some knowledge of the activities of those days, I believe that many, many mistakes were made, for which we are still paying dearly.

After Otepka testified, he was called as a witness by his superior, Mr. Reilly. There followed a series of appearances by the two men, which developed a substantial number of serious contradictions, which were so well reported by the distinguished Senator from Connecticut (Mr. Dodd). For instance, Mr. Otepka testified that he had furnished Mr. Reilly with memoranda about the three men in question. Mr. Reilly swore Otepka had told him about only one of the proposed appointees. When Otepka's attention was called to this conflict of testimony, and he was instructed to produce what evidence he could to show that his version was correct, he produced relevant documents which showed exactly that.

The documents in question included substantive information about the three nominees in question. When the subcommittee notified the State Department of its intention to publish the names, Under Secretary of State Ball and Deputy Under Secretary for Administration William J. Crockett, waged a protracted contest with the subcommittee in an effort to suppress the publication. If successful, the State Department would have blotted out, most effectively, the main points in Mr. Otepka's case.

After 11th-hour arguments, the subcommittee ordered the publication of the documents regarding the three names, the objections of the State Department to the contrary notwithstanding. The Department had made it obvious that Mr. Otepka had stepped on some tender toes. Prominent persons, aided by left-wing elements, had been in a big hurry to go to work on the emasculating of Government security procedures.

The subcommittee's release of the documents was reported in the New York Times of October 2, 1966. The Times story quoted Mr. Crockett as saying to the subcommittee that the publication of the documents "could cause undue embarrassment and distress to the persons involved." Times Reporter John D. Morris added to this his interview with Mr. Crockett, who told him that "the publication of the Otepka memorandum was a great disservice to the men involved."

It is important to remember, Mr. President, that it was the committee, not Mr. Otepka which ordered this material published. Mr. Otepka furnished the information to the committee not for the purpose of embarrassing anyone, but for the purpose of supporting his previous testimony that he had furnished

his superior, Mr. Reilly, with a memorandum about these individuals.

This is the story of the beginning of one of the most unfortunate experiences to condemn any man, I believe, who ever worked in the Government. I believe that Mr. Otepka did what he had to do, that he acted properly, and that he acted in line with his training, his duty, his tradition, and his sense of patriotism. That he should have been persecuted because of this, for a period of more than 5 years, would be beyond belief if it had not happened.

Mr. President, I submit that if we had had more men like Otto Otepka and stronger security checks in our national background during the last few years, our country would have far fewer problems than we have to face today, both at home and in our international relations.

Therefore, I have spoken most enthusiastically in behalf of Otepka, and I enthusiastically endorse his nomination. I hope that all Senators will join in this endorsement.

Mr. THURMOND. Mr. President, the case of Otto Otepka must, in final analysis, stand in the history of this Nation along with other contests and efforts to preserve the security of our great country.

This is a case of a man who stood up for his country, who stood up for his principles, who asked the question, "Is it right?" and not whether it would meet with the favor of his superiors.

Mr. President, because this man stood for what he believed in, he was ostracized in spite of the fact that what he did was legal and in accordance with the public policy of this Nation as enunciated by the Congress and public law of the Federal Government. The law to which I refer is contained in the United States Code, title 5, section 652(D) and states:

The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any member thereof, or to furnish information to either House of Congress or to any committee or member thereof, shall not be denied or interfered with.

Mr. Otepka availed himself of this law, this statement of public policy, when he confidentially offered to the Subcommittee on Internal Security certain documents which illustrated the deterioration of security practices which were designed to protect the security of this Nation.

As a matter of fact, Mr. Otepka furnished no substantive material from personnel files that was not already a matter of record in public or in the subcommittee, and his sole purpose was to demonstrate that his description of these documents was accurate, thereby showing that his superiors had apparently lied under oath.

Mr. President, the facts of this case are not in dispute and it is now public record that when Mr. Otepka's action became known the State Department began an extraordinary campaign of harassment and intimidation. His telephone was tapped, his safe was scaled, and he was demoted to a meaningless job; and finally, in December of 1967, the then Secretary of State, Dean Rusk, ruled that Mr. Otepka was guilty of conduct

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unbecoming a State Department officer and issued orders prohibiting him from ever having any access to security files again. This was a summary judgment designed to punish a man who was concerned about the security of his Nation.

Now, Mr. Otepka has been vindicated. President Nixon's action in appointing Mr. Otepka to the Subversive Activities Control Board speaks for itself. In this new position, Mr. Otepka will deal with the security of this Nation and certainly no man has more clearly proven his ability to act in this field and his great dedication to the purpose of protecting his country.

The Committee on the Judiciary of the Senate has favorably reported the nomination of Otto Otepka and I concur with their finding and the majority report of the committee.

Mr. President, I support the confirmation of Mr. Otepka as a member of the Subversive Activities Control Board.

Mr. President, much has been written about the Otepka case. However, an excellent summary of the principal aspects of the case recently appeared in the weekly newspaper, *Twin Circle*, edited by the Rev. Daniel Lyons, S.J. For those who want to refresh their memory about the case, this article "Otepka's 5-year Struggle Ends," by Vincent J. Ryan, is one of the best summaries I have seen, and I commend it to all my colleagues. Mr. President, I ask unanimous consent that this article, from *Twin Circle*, March 30, 1969, be printed in the *RECORD* at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the *RECORD*, as follows:

[From the *Twin Circle*, Mar. 30, 1969]
OTEPKA'S 5-YEAR STRUGGLE ENDS

(By Vincent J. Ryan)

Having tried for over five years to regain his position as Chief of the Evaluations Division in the Office of Security in the Department of State, Otto F. Otepka has decided to accept from President Nixon an appointment to the Subversive Activities Control Board (SACB). This body handles cases from the Department of Justice that deal with Communist organizations and individuals.

Otepka, regarded by a fellow professional in the security field as "one of the very best security men in the government, one of the most experienced, one of the most able," was fired from his State Department job in 1963 by Secretary of State Dean Rusk, who asserted that Otepka had behaved in a manner "unbecoming an officer of the Department of State."

Otepka's "unbecoming" behavior was that he told the Senate Internal Security Subcommittee the truth about the laxity or lack of thorough security investigations in the State Department. When told by the Subcommittee's counsel that he would have to prove his charges against the Department in order to avoid a possible perjury indictment, Otepka felt duty bound—both legally and morally—to cite specific instances and to name names.

He cited eighteen cases where security in the State Department was either lax or non-existent. And the individuals he named as responsible for such laxity were none other than his immediate superiors. And so Rusk fired for conduct "unbecoming an officer of the Department of State."

According to the U.S. Code, "the right of persons employed in the Civil Service of the United States, either individually or collec-

tively, to petition Congress or any member thereof or to furnish information to either House of Congress or to any committee or member thereof shall not be denied or interfered with."

But in the case of Otto Otepka, civil servant, loyal American, such a right was "denied," was "interfered with."

Although fired by Rusk in June 1963, and although he appealed his ouster immediately, Otepka had to wait until June 1967 for a departmental hearing. As a result of the hearing, which was held behind closed doors, only three of thirteen charges against him were retained. And those dealt with an alleged violation of a directive that President Truman issued in 1948 forbidding government employees from divulging information from personnel security files to members of Congress.

Otepka does not deny that he provided the Senate Internal Security Subcommittee with certain information from the security files, but he had to do so to show that he, and not his superiors, had told the truth to the Subcommittee.

In December 1967 Secretary Rusk upheld the charges against Otepka, reprimanded him and demoted him, and then assigned him to work outside the security field.

Otepka immediately appealed to the Civil Service Commission. In September 1968 he lost his appeal when the Commission upheld the findings of an examiner who ruled that Rusk was legally justified to demote, reprimand and bar Otepka from security work and that the Truman directive of 1948 takes precedence over the act of Congress protecting government employees who testify before Congress.

But let's look at the record:

Otto Otepka began his government career as a messenger in 1936. By 1942 he had won a law degree from Catholic University. After services in the Navy during World War II, he returned to his position as a personnel security specialist with the Civil Service Commission.

In June 1953 Secretary of State, John Foster Dulles, brought Otepka into the Department of State to use his talents to implement Executive Order 10450 which set security standards for all federal employees. Under this directive, if there is any doubt about the loyalty or integrity of an individual the decision made by the evaluator must be in the national interest and not in the interest of the individual.

In 1958 Otepka, who had risen to the rank of deputy director in the Office of Security, received from Secretary Dulles the Meritorious Service Award for an "outstanding display of sound judgment, creative work and acceptance of unusual responsibilities."

Late in 1960, during the transition period between the outgoing Eisenhower administration and the incoming Kennedy administration, Otepka conferred with the future Secretary of State Dean Rusk about security measures and procedures at State. Specifically, Rusk wanted to know if Otepka would give security clearance to one Walt W. Rostow. Otepka replied that he had refused Rostow clearance in 1955 and in 1957 and would have to deny him clearance again. Nevertheless Rostow joined the White House staff as an assistant on national security to President Kennedy. In 1961 he transferred to the State Department, where he chaired the Policy and Planning Committee. In 1966 he transferred to the White House as special assistant for national security affairs.

When Otepka refused to clear obvious security risks, like Rostow, Secretary Rusk began to sign security waivers, a minimum of 152 of them. (During the Eisenhower administration, only five waivers were signed at State.) Rusk's waivers were even backdated to indicate that a thorough security check had been made on the particular individual.

And security matters at State continued to deteriorate.

For example, Otepka was asked one day by Assistant Secretary of State for International Organization Affairs Harlan Cleveland if he would approve the hiring of convicted perjurer Alger Hiss. (Hiss, a top State Department aide during the Roosevelt-Truman era, was convicted of perjury for denying under oath that he was a Communist.) Otepka told Cleveland that no one who has been found guilty of a felony may work for the government.

Because of his penchant for strict security checks on Department personnel, Otepka became the official Department troublemaker. He found it increasingly difficult to do any real security evaluating. In a reorganizational shuffle, he was demoted from deputy director of the Office of Security to chief of the Evaluations Division. His staff was tormented and demoralized, his telephone was bugged, and his files rifled. Matters came to a head when he testified before the Senate Internal Security Subcommittee. His testimony and that of his superiors was in direct contradiction. One of his superiors questioned his sanity. Finally the FBI was called in to investigate Otepka for possible violation of the Espionage Act. The investigation ended almost before it started. There was no case against this honest public servant.

During the 1968 Presidential campaign, Mr. Nixon promised that he would "order a full and exhaustive review of all the evidence in this case with a view to seeing that justice is accorded this man who has served his country so long and so well."

But earlier this year, in what seemed to be a setback for Otepka, President Nixon's Secretary of State William Rogers informed Otepka that all remedies for redress both in the Department and with the Civil Service Commission had been exhausted and that Otepka's only avenue of action would be the courts.

But time and money (some \$50,000 to date) were running out. Otepka simply wanted vindication. He wanted to have the record show that he had done no wrong, that the best interest of his country was his only consideration. And what is more, if Otepka were to go into court, the public testimony could prove very embarrassing to a lot of people still in high places in Washington. The entire sordid story, this gallant fight for truth and justice, would become known around the world.

But more pragmatic minds prevailed. Otepka's attorney Roger Robb assured him that a Presidential appointment, in this case to the SACB, was tantamount to complete vindication. Senators Everett Dirksen (R-Ill.), Barry Goldwater (R-Ariz.), and Strom Thurmond (R-S.C.) also advised him to accept the Presidential appointment. And he did.

One interesting development is the introduction by Senator James O. Eastland (D-Miss.) of S. 12, a bill which would create a Security Administration for Executive Departments. This agency would conduct all security checks on government employees now handled on a departmental basis. The administrator of the new body would be the chairman of the SACB, appointed by the President.

According to Human Events, the respected Washington weekly, "if S. 12 becomes law, it is likely that Otto Otepka will be involved in more security work than he had ever been in the State Department."

Let us hope so.

Mr. THURMOND. Mr. President, I hope the Senate will promptly approve Mr. Otepka.

(At this point Mr. HOLLINGS assumed the chair.)

Mr. DIRKSEN. Mr. President, we agreed earlier that we would not vote

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before 2:30. I think we can vote by that time because evidently I am the last speaker in the procession and I shall take only a few minutes.

First, Mr. President, I would like to have printed in the Record an excerpt from the report of the committee on the nomination because it is as good a report as I have seen in a long time. I include therein the minority views of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Maryland (Mr. TYDINGS). I ask unanimous consent that the excerpt, together with minority and individual views, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXCERPTS FROM REPORT ON NOMINATION OF
OTTO F. OTEPKA

The Committee on the Judiciary, to which was referred the nomination of Otto F. Otepka, of Maryland, to be a member of the Subversive Activities Control Board for the remainder of the term, expiring August 9, 1970, vice Edward C. Sweeney, deceased, having considered the same, reports this nomination favorably to the Senate and recommends that the Senate advise and consent to the appointment of the nominee.

HISTORY AND PROCEEDINGS ON THE
NOMINATION

This nomination was transmitted to the Senate by the President on March 20, 1969, and has received careful consideration. No effort has been made to rush action on the nomination.

An ad hoc subcommittee (consisting of Senators Eastland, McClellan, and Hruska) was appointed in due course to consider the nomination, and notice of an open public hearing on the nomination was published in the Congressional Record of April 3, 1969.

The hearing was held on April 15, 1969. No one appeared in opposition to the nomination.

The subcommittee unanimously reported the nomination favorably to the full committee.

Thereafter Mr. Otepka, who had not been questioned at length on the occasion of his appearance before the subcommittee named to consider his nomination, was called upon to answer a detailed questionnaire with respect to his personal finances and his associations, which was made a part of the printed record under date of May 9.

On May 13, 1969, Mr. Otepka was called before an executive session of the Committee on the Judiciary and Senators were given an opportunity to question him further before the committee voted on the nomination.

With 13 Senators present, the vote was 10 in favor of confirmation and three opposed. It was agreed that absent Senators might record their votes if they wished, since the result could not be changed thereby. The final vote was 12 to 3 in favor of the nominee.

The minority asked that a written report be prepared, with the majority to be given 2 weeks (including 1 week after the preparation of the majority report) in which to file a minority report. This was agreed to without objection.

BACKGROUND AND EXPERIENCE OF THE NOMINEE

At the age of 54 (his birthday was May 6) Otto Otepka is a fine example of the best type of career civil servant, one who has risen in government through his own efforts and ability.

Mr. Otepka started working for the U.S. Government in 1936, as a messenger. For 6 years he occupied minor positions in the Farm Credit Administration and the Bureau of Internal Revenue. For 3 of those 6 years he went to law school at night.

In 1942, the Civil Service Commission appointed him an investigator and security officer, and he served in that capacity until 1943, when he entered the U.S. Navy as an apprentice seaman.

In 1946 he was honorably discharged from the Navy with the grade of petty officer, first class. He returned to his job with the Civil Service Commission, where he continued to serve as an investigator and security officer until 1953, when he was appointed as a security officer in the Department of State.

In August 1953 he became Chief of the Evaluations Division of the State Department's Office of Security.

In September 1955, the then Director of the Office of Security stated in a memorandum that Mr. Herbert Hoover, Jr., had "gone out of his way to express appreciation for Mr. Otepka's work," stressing particularly "form, substance, and objectivity of presentation."

In April 1957, Otto Otepka was appointed Deputy Director of the Office of Security, and became working head of the State Department's personnel security organization.

That same year Mr. Loy W. Henderson, Deputy Under Secretary of State for Administration, wrote a memorandum declaring Mr. Otepka deserving of "special commendation" for his handling of many "delicate" cases of security clearances for Presidential appointments.

At the State Department's Honor Awards ceremony in April 1958, Mr. Otepka received a meritorious service award.

In October 1960, Mr. Otepka's superior advised him in writing that he was being placed on special detail "to establish an organization and methods and procedures to review the security files of all Foreign Service officers and of all general schedule employees of the Department above the GS-14 level." The memo indicated Mr. Otepka was being given this job because he was "the security officer best qualified in the field of personnel security."

In May 1962, the Head of the Office of Security wrote a memorandum praising Mr. Otepka's "ability and his dedication to the security program," declaring that "over the years Mr. Otepka has made a very real and substantial contribution to the Office of Security and hence to the national security."

In September 1964, the then Under Secretary of State for Administration, Mr. Crockett, described Otto Otepka as "a knowledgeable, realistic security man."

In December 1967, the Senate Internal Security Subcommittee reported that Otepka "had established a nationwide reputation as a top security officer."

WHAT HAS BEEN CHARGED? WHAT HAS
BEEN PROVED?

In the light of what appears to have been substantial efforts to develop information derogatory of Mr. Otepka, or otherwise adverse to the approval of his nomination, it is important that we understand clearly what has been charged and what has not been charged, and what has or has not been proved.

There is no evidence, and not even an allegation, that Otto Otepka ever performed an act or made a statement harmful to his country.

Even before the State Department withdrew 10 of its 13 counts against Mr. Otepka, Secretary of State Rusk and Deputy Under Secretary Crockett each testified, before the Senate Internal Security Subcommittee, that he did not consider Mr. Otepka to be a security risk.

No specific charge has been made, and there is no evidence that Mr. Otepka ever committed an unpatriotic act or uttered an unpatriotic statement.

No specific charge has been made, and there is no evidence, that Mr. Otepka ever discriminated against any person because of race, color, or religion.

No specific charge has been made, and there is no evidence, that Mr. Otepka ever

said or wrote anything that could be described as "racist" in tone or purpose.

Yet Mr. Otepka has been called anti-Semitic with no stronger justification than allegations that he has been supported by a man characterized as a Nazi.

There is no evidence that Otto Otepka ever lied.

His truthfulness was called into question in 1963 when two of his superiors gave testimony contradictory to testimony already given by Mr. Otepka. Confronted with this conflicting testimony, Mr. Otepka produced documentary evidence which established conclusively that his own testimony had been truthful.

Otepka's superiors, whose testimony Otepka had refuted in this way, charged him with "conduct unbecoming a State Department officer" in bringing forth the evidence to prove that he had not lied.

There has been no direct charge that Otepka lied when he said he had no connection with the John Birch Society or the Liberty Lobby. But those who profess to disbelieve Mr. Otepka's statement challenge his veracity by necessary implication.

With regard to American Defense Fund and Defenders of American Liberties, there has been no direct charge that either organization is controlled by or is subservient to either the John Birch Society or the Liberty Lobby.

Mr. Otepka has not been directly charged with having been controlled or improperly influenced by any Nazi or Fascist or other totalitarian organization.

But, however far implications of this nature have fallen short of a direct allegation that Mr. Otepka's "basis of strength" is, in fact, "the Liberty Lobby and the John Birch Society," it seems undeniable that such questions were intended to be raised.

WHAT IS "GUILT BY ASSOCIATION"

It is not correct to label all inquiries respecting a person's contacts and dealings with other individuals, or with groups or organizations, as "guilt by association." In considering an alleged conspiracy, association and contact with others, especially when correlated with concert of action in support of mutual objectives, may be among the most important factors for consideration.

It is, of course, highly improper to impute to any individual, in the absence of any expression or action on his own part, opinions held or actions taken by his friends or associates. On the other hand, no person should be discharged completely from responsibility for deciding whom he wants as friends, or for determining the nature and extent of his associations with other individuals or with particular groups or organizations.

If all of the support for an individual comes from a single group, or from a single stratum of our society, or from individuals, groups, or organizations which can be categorized as having joined in service to some special interest, it may not be improper to inquire whether the individual or proposal being supported partakes of or will serve or has served the same special interest. But it would be egregiously unfair to impute to a nominee or candidate, whose support comes from various levels of our social strata and from individuals, groups, and organizations having widely divergent views and organizations, a particular view or objective of just one or two of the supporting forces.

THE PROPER STANDARD

In the security field, the proper criterion (under Executive Order 10450) is whether the person whose security is being evaluated maintained "sympathetic association" with individuals, groups, or organizations known to be subversive in character. (It is noteworthy that Mr. Otepka was cleared under this standard, after an FBI investigation.

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before his nomination was sent to the Senate.)

The Supreme Court of the United States has used a somewhat similar standard, referring to "meaningful association."¹

Otepka has no "sympathetic" or "meaningful" association with the Subversive Association.

We are convinced, beyond a shadow of doubt, that Otto Otepka has had no sympathetic association with any individual, group, or organization of a subversive nature; that he has had no "meaningful association" with any such individual, or group, or organization, from which it would be proper to draw any inferences that he is or has engaged in a conspiracy, or that he has aided or abetted any such individual, group, or association in attaining any improper objectives. There is no evidence of any probative value that Mr. Otepka shares, or is even friendly to, any subversive or unpatriotic or totalitarian views or principles or activities of any such person, group, or organization.

WHO HAS SUPPORTED OTEPKA?

If the question is "Who has supported Otto Otepka?" there are many possible answers.

Veterans' organizations have passed formal resolutions supporting Otto Otepka. (The American Legion passed resolutions in Otepka's behalf at two national conventions.)

The American Civil Liberties Union supported Mr. Otepka by issuing a statement protesting the State Department's refusal to grant him an open hearing.

Otto Otepka has enjoyed the support of the Young Republican organization, and of the League of Republican Women.

Various editorialists, columnists, and commentators have supported Mr. Otepka. For instance, the New York Daily News, on March 21, 1969, in an editorial entitled "Justice for Otepka," said:

"Mr. Otepka, as a State Department security officer, was a victim of a departmental vendetta of the most contemptible kind—because he gave information to the Senate Internal Security Subcommittee headed by Senator James O. Eastland (Democrat-Mississippi). He was relegated to a meaningless State job.

"The President now seeks to grant Otepka a measure of belated justice. As was to be expected, professional 'liberals' are trying to wreck this Presidential effort—with the other New York morning newspaper leading the snapping, snarling pack.

"The Senate can best rebuke these gentry by confirming the Otepka nomination forthwith. And Congress could do nothing better, we believe, than to pass a new subversive activities law reversing the Earl Warren Supreme Court decisions which have clipped so many of the SACB's original claws."

Under the headline "Otto Otepka Kept Personal Honor," columnist Holmes Alexander said on Saturday, March 22, 1969:

"He would not accept the hidden bribes. He would not bend the knee. He would not yield to threats. He would not accept the upward-and-out promotions that would have saved his dark, handsome, gentle, puzzled face.

"Otto Otepka's personal honor, his professional pride, his Slavic blood that runs rich with stubborn principle—all these kept him fighting for 8 years, and brought him at last to a victory that is a victory for us all—for our freedoms.

"For those who like to be around when history provides a landmark case, this is a time

to remember. It will be written that Otto Otepka, civil servant, was true to his oath of office. He would not bend the regulations and grant the wholesale 'waivers' on security clearances, even at the command of the Attorney General and the Secretary of State. It will be written that Otepka struck a blow for freedom of information and for the Constitution's checks and balances, when he gave the Senate what the State Department was trying to hide. It will be written that he was made to suffer long for choosing national loyalty above what the bureaucracy called organizational loyalty."

The April 8, 1969, issue of the Stars and Stripes, under the byline of Vera Glaser, carried this assertion:

"Otepka's two decades of experience in the field would make him, if confirmed, the only Board member with the credentials to manage a wide-ranging evaluation operation."

Commentator Ron David, on station WTOP on April 12 and 13, 1969, said:

"In fact, Otepka is simply a hard-working bureaucrat who tried to do his job, and apply security standards in a uniform manner. He was attacked because he wouldn't make exceptions for political favorites—he simply wanted full investigations. He wasn't calling anyone a Communist without cause. * * * Anyone who does the research on this case necessary to testify is almost certain to conclude that Otepka is a much maligned and much harassed individual.

"Otepka is a man with lengthy experience in the security field. He has a record that shows he cleared Wolf Ladejinsky, a liberal who had been unjustly accused, by Agriculture Secretary Ezra Taft Benson, of being a security risk.

"It is not necessary to argue whether Otepka is the only man for the Subversive Activities Control Board or not. He is an American citizen. He has no criminal record. He has a clean record as a Government employee for more than 30 years, and he was given the State Department's Meritorious Service Award by Secretary Dulles in 1957.

"Otepka deserves a fair break. He deserves better than the 'smear' by uninformed people. I believe that most of the critics would favor Otepka if they would simply do the research."

On April 26, 1969, in an address to the Bipartisan Council Against Communist Aggression, Pulitzer Prize winning reporter, Clark Mollenhoff, paid tribute to Otto Otepka for "moderation, patience, and conscientious hard work on the seemingly impossible problems that face our society," and expressed the hope that Mr. Otepka's nomination will have been confirmed "within a few weeks." Said Mr. Mollenhoff:

"I hope his term on the SACB will be marked by the same thoughtful and balanced actions that have characterized his approach to his six years of trial * * * Otepka, managed to keep the bitterness to himself and avoided the temptation to engage in a public name-calling contest.

Mr. Mollenhoff declared:

"Every investigation I made of Otepka's story demonstrated that he was accurate on the facts, and balanced in his perspective * * * he was amazingly objective in viewing his own case, had in judgment about the men who were allied against him. He had the restraint and judgment to draw lines between those who were actively engaged in illegal and improper efforts and those who seemed to be simply trapped into a position by carelessness or to present a united political front."

Mr. Mollenhoff told his listeners:

"Despite the care with which Otepka related his case, I had difficulty in believing it was as one-sided as it appeared. I made every effort I could to determine if the facts were glossed over or omitted by Otepka or the Senate committee.

"But there was no hint from anyone that Otepka was involved in either subversion or

crime * * * No one could or would cite a case of irresponsibility or lack of balance in any Otepka evaluation."

SENATORS ALSO SUPPORT OTEPKA

Numerous Senators, including those filing this report, have supported Otto Otepka in the past, and support him today.

On October 31, 1963, the members of the Senate Internal Security Subcommittee signed a letter to Mr. Dean Rusk, then Secretary of State, in which, after stating that Mr. Otepka had "performed a substantial service for his country," the Senators declared:

"We would consider it a great tragedy if the services of this exceptionally able and experienced security officer were lost to the U.S. Government."

No inference is justified that any Senator, by supporting Mr. Otepka in the past, or by supporting this nomination now, is doing the bidding of any special interest group or serving any interests except those of the United States of America. For ourselves, individually and collectively, as well as on behalf of those of our colleagues holding similar views, we reject any such implication.

WHERE OTEPKA'S STRENGTH LIES

Otto Otepka's strength lies in his record of outstanding service to his country over a period of more than 30 years, in the respect and admiration accorded him by professional security officers both in and out of the Government; above all, in his "courage in the right" as God gives him to see the right.

COMMITTEE FINDINGS

We find that Otto F. Otepka is an experienced Government administrator. He is intimately familiar with the civil service rules, regulations and personnel practices.

Mr. Otepka is recognized by the intelligence community as an outstanding security officer, especially skilled in the field of personnel security evaluations.

Mr. Otepka has a legal education, and we do not think it detracts from his merit that he had to go to school at night for 3 years in order to get his law degree.

Mr. Otepka is a man of honor, integrity, and ability. His personal and family life are exemplary. He is respected in his community and liked by his neighbors.

Otto F. Otepka is a career civil servant still in the prime of life, though with more than 30 years of service to his government and his country already behind him.

Mr. Otepka is a man of equable temperament and balanced judgment, able to be more than usually objective in his consideration of a situation.

The position for which Mr. Otepka has been nominated represents a Republican vacancy, and Mr. Otepka is a Republican.

As long ago as 1955 the then Secretary of State, Mr. Dulles, cited Otto Otepka as one who had "shown himself consistently capable of sound judgment, creative work, and the acceptance of unusual responsibility." All of the pertinent evidence available to us supports the same conclusions today.

MINORITY VIEWS OF MESSRS. KENNEDY AND TYDINGS

The undersigned members of the Judiciary Committee respectfully dissent from the report of the majority of the committee. That report omits the facts of the personnel actions relating to the nominee at the State Department. It also omits meaningful discussion of the financing of the nominee's legal efforts during his dispute with the State Department. While we have serious questions regarding the standards of "association" to which the majority appear to subscribe, we believe that application here of even much less rigorous standards would have required more careful consideration of the relevance of the nominee's major sources of financing to his suitability for the position at issue. Finally we have serious doubts

¹In cases involving affiliation with the Communist Party, the Supreme Court of the United States has ruled that the association must be "meaningful" in order to be the basis for legal sanctions. See *Rowoldt vs. Peretto*, 355 U.S. 115.

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as to the need for confirming any nominee at this time as the fifth member of an agency which has hardly enough work to occupy one member full time.

When created by Congress, the Subversive Activities Control Board was given exceedingly broad powers to perform what was considered to be a highly sensitive function. The broad sweep of Board power has been significantly circumscribed by the Supreme Court, where it was found violative of the individual constitutional rights of American citizens. The question before this committee is, given the purpose and intended functions of the SACB, is the nominee qualified to hold the post of Board member? That this has been considered a high Government post is reflected not lightly in the salary accorded by the Congress to those holding the position.

To fulfill the intended functions of the office, it is clear that a member of the SACB must be capable of highly judicious conduct in the performance of his duties, and that his qualities of judicial impartiality and objectivity must be beyond reproach.

The nominee before this committee has not demonstrated these qualifications for office.

His activities in the State Department led to his removal from matters involving administration of personnel security functions. This action was sustained by a Democratic Secretary of State and pointedly not reversed by his Republican successor. In light of the latter position, taken within the current administration, it is difficult to understand the justification for nominating him to a position higher than that from which he was removed.

We have highest regard for the principle that the President ought to have the broadest possible latitude in making his appointments. However, we equally believe that the function of advice and consent places upon the Senate a constitutional obligation to verify the fundamental qualifications of such nominees as the President submits. We feel that our concerns in the areas discussed require us to exercise our advice and consent functions by declining to support the pending nomination.

EDWARD M. KENNEDY.
JOSEPH D. TYDINGS.

INDIVIDUAL VIEWS OF MR. MATHIAS

I do not believe the information of record justifies interference in the wide discretion permitted the President in submitting nominations, and did not oppose Mr. Otepka. I do not believe, however, that the record justifies or the occasion demands all of the assertions in the majority report and therefore associate myself with the separate views of Senators Bayh and Burdick.

CHARLES MCC. MATHIAS.

INDIVIDUAL VIEWS OF MESSRS. BAYH AND BURDICK

We voted in the committee to report favorably for nomination of Mr. Otto F. Otepka to be a member of the Subversive Activities Control Board because of our belief that, in the absence of convincing evidence to the contrary, the President should be allowed considerable leeway in choosing major officers. However, we do not fully concur with all the conclusions cited in the report regarding the qualifications and associations of the nominee. Accordingly, we do not join in the majority report.

BIRCH BAYH.
QUENTIN N. BURDICK.

INDIVIDUAL VIEWS OF MR. HART

It is with reluctance that I disagree with a majority of the committee on this nomination.

A President should be permitted to have whomever he chooses to aid his administration provided the nominee possesses the tem-

perament and ability to perform his duties, even if it is only probable that he will have duties.

A member of the Subversive Activities Control Board should be an individual whose background evidences balanced judgment and a sensitivity to the probable areas of his potential endeavors.

I am not persuaded that the nominee has demonstrated these qualities.

PHILIP A. HART.

Mr. DIRKSEN. Mr. President, I also ask unanimous consent to have printed in the RECORD the introductory statement which I made when I presented Mr. Otepka to the subcommittee that heard the testimony with respect to the nomination.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF HON. EVERETT DIRKSEN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DIRKSEN. Mr. Chairman and members of the committee, I am here to urge the approval by the subcommittee and the full committee of the Otto Otepka appointment, and his confirmation by the Senate; that is, the appointment to be on the Subversive Activities Control Board.

Frankly, Mr. Chairman, the Otepka story is a little fantastic, and I say that advisedly as a member of the Internal Security Subcommittee, and having chaired some of the hearings where Otepka was involved.

I have often thought that maybe James Bond, or Agent 007, or whatever it is, ought to write the story, but Otepka has been in the Federal service for 33 years. He came into the service as an assistant messenger in the Farm Credit Administration. Then he became an investigator and security specialist for the Civil Service Commission.

Later, he entered the U.S. Navy and he became a personnel classification specialist and then moved to the State Department in 1952 as a personnel security evaluator.

Now, his ratings, while he has been in the service have been good, satisfactory, and excellent. I read the appraisals of his service by his superiors and those appraisals were very high.

From Secretary Dulles he received the Award for Meritorious Service, but his adventure really begins in 1960 when he undertook the evaluation of 858 cases in the State Department under the Security Director Scott McLeod.

Well, Scott McLeod was subsequently appointed as our Ambassador to Ireland and somehow the whole project was then dropped. When Secretary Dulles and Gordon Gray and others proposed a survey to examine and determine why the U.S. prestige abroad was so impaired, the results were marked "Secret."

Somebody leaked it to the campaign headquarters of the late President Kennedy, and they were also published in the Washington Post and the New York Times.

Otepka investigated, and the guilty person were separated from the service.

The public relations director for the Kennedy campaign, who received the report, was later made head of the Secretariat in the office of the Secretary of State.

In December of 1960, Otepka met with Secretary Dean Rusk and then Attorney-General designate, the late Robert Kennedy. They wished to discuss the criteria to be used for security purposes. Otepka insisted that the rules established by the Senate Foreign Relations Committee should be followed.

At the time, the State Department was considering the name of Walt Rostow for appointment. The Air Force had filed an adverse report on Rostow. Herbert Hoover, Jr., who was then Under Secretary of State, deemed Rostow unqualified. The comment of the Attorney General-designate was, "Those

Air Force guys are a lot of jerks." That is the end of the report.

Rostow was assigned to the White House. There was an FBI check, and later, Rostow was transferred to the State Department.

At some point in time, one Charles Lyons was named Deputy Chief of Evaluations. Neither Otepka or his associate, Mr. Adams, liked it very much. For 2 years, Lyons served as security officer in the U.S. Embassy in Athens, Greece. In that time, there were 52 violations of security regulations on confidential material; there were 22 violations involving secret and top secret matters; and, 125 violations of the rule on "Official Use Only."

That was the Lyons record.

At one point came the case of William A. Wieland who was on duty in Cuba, and it was widely publicized in Wieland's files, the allegation that he had concealed information on Cuba and Castro. Otepka's superior gave Otepka an oral instruction to clear Wieland. Otepka replied that it must be in writing, and he refused to do it unless it was in writing.

When John A. Topping was named as Cuban Service officer, Otepka insisted that Topping be investigated. Otepka was removed from the investigation. Topping was subsequently cleared to the Council of American States.

The CHAIRMAN. Now, you spoke of Wieland. He was in charge of the Caribbean—Cuban desk, wasn't he?

Senator DIRKSEN. He was.

The CHAIRMAN. Isn't it true that information from all the security agencies reached that desk?

Senator DIRKSEN. That is right.

The CHAIRMAN. And that Castro was a Communist—

Senator DIRKSEN. That's right.

The CHAIRMAN. And it never got beyond that desk to his superiors?

Senator DIRKSEN. That is right, and that is the thing that Otepka insisted on investigating and evaluating, and very properly so.

Now, when he was named to the staff of the War College, with the suggestion that it was a very high honor, he rather naively and simply inquired about his return to the State Department. He received an evasive answer, so he declined the assignment, regardless of the honor that might have been involved.

Year after year, Mr. Chairman, this sort of thing went on. He was urged to give waivers on job applicants when he knew they should be investigated for security reasons, and he steadfastly stood his ground and refused, as he understood the law, the regulations and the intent of the Congress.

There was a veritable cavalcade of superiors over the years—a Mr. Bassin, a Mr. Reilly, a Mr. Bellsie, a Mr. Traband, and others. Time and time again Otepka was promoted, he was demoted, he was shifted, he was transferred, he was pressured, he was snubbed, he was ignored and he was harassed, but he stood firm. He regarded his responsibility to investigate applicants for jobs in the State Department where there was an allegation of Communist taint, as a solemn duty, and he resisted all pressures to waive such investigations or to clear such persons on instructions from his superiors.

Of the 13 charges that were made against him, 10 were withdrawn, and of the other three, only one was actually emphasized. That related to his delivery outside the Department of two memorandums and a report relating to the security investigation of a certain person. Those were delivered up here.

Mr. Otepka justified his action under section 652(d) of the Code which provided as follows: "The right of persons employed in the Civil Service of the United States either individually or collectively to petition Congress or any Member thereof or to furnish information to either House of Congress, or to any committee or member thereof shall not be denied or interfered with."

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That is in the statutory code.

So, Mr. Chairman, it is a fair question whether an Executive Order of the President, or the clear terms of the statute shall prevail, but in any event, the Secretary of State accepted the findings of the hearing officer when they had a hearing on Otepka and then administered discipline. Ultimately, Otepka was given leave without pay and he remains in that status as of this day.

There have been hearings and appeals, and appeals and hearings, the last of which was the appeal from the Secretary of State's findings to the Appeals Section of the Civil Service Commission and that appeal was denied.

The action taken in the Otepka case is a sad commentary on the handling of security matters in the executive branch of Government and could easily induce the belief that there was no resolute effort to prevent persons with a Communist taint from finding positions in Government. But, Otto Otepka's devotion to duty and his dedication to his country was such that he was willing to endure harassment rather than yield.

But, Mr. Chairman, the harassment is not over. Since his name has been submitted to the Senate for appointment to the Subversive Activities Control Board, the New York Times has assigned a reporter named Neil Sheehan to investigate Otepka and to smear him, at least that is what I felt after I read Sheehan's article and knew what was going on and who he was contacting.

Sheehan has been calling a number of citizens in Illinois—all highly reputable—to ascertain what Otepka was doing at certain cocktail parties.

Now, parenthetically, Mr. Chairman, I ought to interpose here and say that one reason I am interested in this is that Otepka is from Illinois. His elderly father and mother still live in Chicago. He has a brother out there who has been very successful in business, and so Mr. Sheehan took it upon himself to call a number of people. He called one James Stewart, of Palatine, Ill., director of the American Defense Fund which raised some money for Atepka's defense, and sought to pin a John Birch Society tag on Mr. Stewart.

He questioned not only Mr. Stewart but also Otepka on the latter's presence at a New England "Rally for God, Family, and Country," and sought to put a John Birch brand on that rally. It was held in Boston, and it has been taking place annually. It will make little difference what kind of a smear may come out of Reporter Sheehan's typewriter, the simple fact was that the rally was addressed by such people as Clarence Manion, former dean of Notre Dame Law School, Lloyd Wright, past president of the American Bar Association, J. Fred Schafley, who is a very prominent lawyer in Alton, Ill., and I know him very well and I know his wife very well, who has been very active politically and otherwise, and by Clyde Watts, a retired brigadier general and prominent attorney in Oklahoma City, and there were others.

Well, the very idea of trying to put a Birch tag on a rally like that, because there were a thousand people there, and as for Otepka's presence at the rally, he and his wife, who happens to be a schoolteacher and who were taking a little vacation, went up to a little town called Hingham, Mass., and while up there, became aware of the rally, and incidentally they stayed in Hingham the entire time of their vacation; and when they became aware of the rally, they went down to Boston as did the others. This is the New York Times' way of paying Otepka back for investigating the leak of the survey on our prestige abroad, which found its way to the public relations man in the political headquarters, and then into the New York Times.

So, looking into this thing in the large, and if Mr. Chairman, I recited this record,

it would take hours and hours, and I am not going to weary the committee with that kind of recital, I just conclude by saying this—If there is any man in this entire land who has demonstrated his capacity and competence as an investigator and who manifested his loyalty and devotion to the United States, that man is Otto Otepka. He is ideally suited to serve on the Subversive Activities Control Board, and I urge his approval by the subcommittee, the full committee, and his confirmation by the Senate.

I think the President is to be commended for his appointment.

Now, with respect to the Subversive Activities Control Board, you will recall the long-running fight we had after the Supreme Court decisions that were virtually putting the Board out of business. I undertook to provide all the necessary amendments, with staff, and I think we amended the Internal Security Act in at least 19 different places in order to make it conform to the Supreme Court decision. But, they tried to put the Board out of business and then they tried through their appropriations committee to knock out all the appropriations for the Board, and then, of course, it was spread all over the country, they were paying the salaries of the Board when they had nothing to do.

It was not the Board's fault, it is the culpability of the Attorney General of the United States, because under the Security Act, it is up to him to send those cases over to the Board, and he did not do so.

Now then, there was testimony before the Senate Appropriations Committee that they had perhaps a thousand cases over there, and at long last, the former Attorney General, Ramsey Clark, came to my office and said, "I am advising you today that I am sending six cases to the Board."

Since the transition from one administration to another, the new Attorney General has advised me that he has also sent some cases to the Board and there are a lot of others.

I mention, Mr. Chairman, that that is the only agency in the executive branch of this Government that has the authority and that exercises the responsibility and the duty of pursuing things in the internal security domain, and instead of trying to weaken that Board, it ought to be strengthened and it ought to be given a longer lease on life, and it ought to be given perhaps some additional authority, but for the moment at least we will leave it stand.

Otto Otepka would be an excellent member on that Board, because of his long background in the evaluation and in the investigation of those things that fall in the internal security domain.

That is it.

The CHAIRMAN. I will say I think you put your finger on it, the devotion to duty is the cause of the trouble he had.

Senator DIRKSEN. Exactly.

The CHAIRMAN. Any questions?

Senator HRUSKA. Senator Dirksen, as a result of the hearings which were held, and they were protracted and extended over a long period of time, in the Internal Security Subcommittee, with reference to the security system and the reorganization of the Bureau of Consular Service—

Senator DIRKSEN. Consular Security.

Senator HRUSKA. Security, there were eventually charges filed against Otepka, and they were 13 in number, as I remember. And, there was a hearing, and the hearing officer of the Department heard the testimony and found against Otepka on all 13 charges.

At a later time, however, and before the case was appealed to higher authority within the Department, nine of those charges pertaining to the burn bag evidence and to some of the other things, disclosure of documents unfairly and illegally, charges four to 13 were dismissed and cut away from the entire procedure.

What significance do you attach to the fact that that was done and the case proceeded only on three charges?

Senator DIRKSEN. Simply because of the harassment that was involved and shall I say the suspicion that existed there in the Bureau? Who shall say whether that burn bag was not loaded by somebody else when the investigators came upon it, and that I thought was made reasonably clear in the course of those hearings that I attended.

Senator HRUSKA. Then, there was bugging and wiretapping of Otepka's phone that made quite a furor at the time, and there was sworn testimony by two witnesses who were in the State Department at the time they had no recollection or no knowledge of wiretapping or bugging of Otepka's phone on his premises.

They took a letter from Senator Dodd, of Connecticut, as I remember, or maybe a speech on the Floor—the letter I think was addressed to Secretary Rusk, saying that the committee had information of bugging and wiretapping and only then were the two witnesses' memories sort of refreshed a little bit and they appeared before the subcommittee and indicated they wanted to clarify their testimony. The clarification consisted of the statement, well, now, they did remember that wiretapping was affected, that it was attempted and in some instances consummated.

Now, my further recollection is that one of these witnesses is still with the State Department, notwithstanding that rather sordid failure to recall an event as significant as wiretapping Otepka's phone.

The other one was discharged or at least he resigned and after a few months in law practice he turned up as an employee of another agency, I believe the Federal Communications Commission.

Now, here we have charges against Otepka in which he was found guilty eventually by the Secretary of State of doing things which were illegal and yet we find that the two employees involved in this bugging and wiretapping incident were not only not disciplined, but apparently they were rewarded.

Would you have any comment as to the consistency of any such judgments or any disposition of those two cases?

Senator DIRKSEN. Well, as I recall, I think I was there at one of those hearings, or more, and I thought I handed one of these particular people a screwdriver and I asked—now, show us how to bug a telephone, but he was very reluctant and didn't want to do it, and of course I could not make him do it.

Senator HRUSKA. The hearings were long. I think your statement is a very restrained version and a summary and reference to them, but I do recall this big issue came up, that apparently one of the issues was whether Otepka's loyalty should be on a parity like this, State Department first, the country and the Congress somewhere down below first priority, and that is clearly not the listing in the Code of Ethics that the State Department has promulgated, nor is it in keeping with that section 652 that you read from.

Do you agree that there is a little bit of disproportion in expecting a man to really compound fabricated testimony out of loyalty to the Department as compared to an idea of clearing up what would be even fabrications and maybe even falsehoods before the committee of the Senate which is charged by law to have oversight over all of these things?

Senator DIRKSEN. That provision in the Code is so explicit and so clear, and when duty comes in conflict with an Executive order and there is a statutory provision, it would occur to me, because of his devotion to the country, that he was quite in the right in submitting what he had there in the interest of our security.

Mr. Chairman, in connection with his testimony I think there ought to be submitted for the record a brief that Mr. Otepka's at-

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torney filed because it is fully documented and it starts at the beginning and goes right up to the end.

Secondly, I think that Mr. Sheehan's reports in the New York Times ought to be carried in the record and third, I think the editorial which was written in pursuance of the Sheehan stories should also be in the record, I would like to see the whole business there, because that is the only way you can point out how easily it can be refuted and whether or not that isn't a punitive attitude on the part of the New York Times.

The CHAIRMAN. It will be admitted.

(The documents referred to will be found in the appendix.)

Senator HAUSKA. Mr. Chairman, I wonder if the purpose of the record, so that it would be available for general inspection of any Member of the Senate who wants to get into it, or anybody else, would it not be well to attach also and include in the record the report of the hearing officer as originally made, I believe that was Edward A. Dragon, it looks like, and his signature, and that was in December 1967; and then there was a decision on appeal to the Civil Service Commission and a decision on that, and finally the decision on appeal that was signed by Secretary Rusk on this subject.

The CHAIRMAN. It will be admitted.

(The documents referred to will be found in the appendix.)

Senator HAUSKA. I have no further questions at this time, Mr. Chairman.

Senator DIRKSEN. Mr. Chairman, Mr. Otepka may speak for himself, and I simply marvel at his "stick-to-it-iveness" as they used to say, and his willingness to go through all of these things. He has endured all this for a 5-year period, and I suppose some adverse comment might be made with respect to the James Stewart of Palatine, Ill., to raise a defense fund for him. I don't know how Mr. Otepka would have gotten along if it had not been for that, because it certainly could not have been done out of his wife's salary, which was probably the only income he had.

So, I will salute him for his devotion to the country and to the cause of internal security.

I thank the subcommittee.

The CHAIRMAN. Is there anyone present who desires to testify against this nominee?

(No response.)

The CHAIRMAN. Mr. Otepka will you identify yourself for the record?

Mr. DIRKSEN. Mr. President, I ask unanimous consent to have printed in the RECORD a letter signed by the Senator from Massachusetts (Mr. KENNEDY), the Senator from North Dakota (Mr. BURDICK), the Senator from Maryland (Mr. TYDINGS), and the Senator from Michigan (Mr. HART), with respect to certain matters in the nomination and with respect to Otto Otepka, which was contained in a letter to the chairman of the full committee, dated May 5, 1969.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., May 5, 1969.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the discussions at the Committee meeting last week, we believe that before the Committee takes up the nomination of Otto Otepka to the Subversive Activities Control Board, there should be included in the printed record information relating to the recent questions raised about Mr. Otepka's finances and connections. In particular we suggest that the staff obtain from Mr. Otepka,

and from independent inquiry if necessary, the facts on the following subjects:

1. Mr. Otepka's source of income, other than his State Department salary, since 1961.

2. The precise sources and amounts of financing for Mr. Otepka's legal fees, living expenses, travelling expenses, and other expenses since 1961.

3. Any formal or informal connections between Mr. Otepka and (1) Mr. Willis Carto, (2) the John Birch Society, (3) the Liberty Lobby, or (4) any other persons or organizations actively associated with Mr. Carto, the Society or the Lobby.

4. The accuracy of a report that Mr. Otepka stated in response to questions about his associations: "I am not going to discuss the ideological orientation of any one I am associated with; and, if the report is accurate, Mr. Otepka's opinion as to the applicability of a similar standard to others being considered for federal employment or otherwise under inquiry in connection with security matters.

5. Mr. Otepka's opinion as to the possibility that individuals and groups of the type generally described as "radical right" or individuals or groups generally described as "Nazi" might under certain circumstances constitute a threat to domestic security.

6. The extent to which the issues raised in the preceding questions were investigated and considered in the course of the Executive Branch's pre-nomination procedures regarding Mr. Otepka.

We are confident that all the members of the Committee join us in feeling that fairness to the nominee and to the public requires that these matters, which have been raised publicly, be aired and resolved within the Committee before it passes on the nomination. We are hopeful also that Mr. Otepka will feel free to take this opportunity to make any further comments he wishes regarding the office to which he has been nominated and his suitability for it.

Sincerely,

EDWARD M. KENNEDY.
QUENTIN BURDICK.
JOSEPH D. TYDINGS.
PHILIP A. HART.

Mr. DIRKSEN. Mr. President, I also ask unanimous consent to have printed in the RECORD a memorandum that was prepared with respect to the various questions that were raised.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM

MAY 9, 1969.

To: Senator Eastland.

From: J. G. Sourwine.

Subject: Inquiries of Senators Hart, Kennedy, Burdick, and Tydings respecting finances and connections of Otto Otepka.

In compliance with your instructions the staff has obtained from Mr. Otepka, and from independent inquiry as necessary, the facts called for by the questions propounded.

The questions are repeated below, *seriatim*, and the facts obtained by the staff with respect to the subject matter of each question are set forth, immediately thereafter.

1. Mr. Otepka's source of income, other than his State Department salary, since 1961.

Since 1961, Mr. Otepka has had income, other than his State Department salary, only from the following sources: (A) interest on savings accounts and stock dividends; (B) wife's salary as a school teacher (from 1965 only); (C) daughter's salary (during 1968 only); (D) director's fees (family corporation); (E) sum received by wife in 1966 by gift and devise from her aunt.

2. The precise sources and amounts of financing for Mr. Otepka's legal fees, living

expenses, travelling expenses, and other expenses since 1961.

LEGAL EXPENSE

Total legal expense incurred in connection with Mr. Otepka's case has amounted to \$26,135, of which \$25,127 represented legal fees and \$1,008 represented reimbursement of cash disbursement by counsel. These legal expenses have been met by voluntary contributions from more than three thousand different contributors. Most of the contributions were in relatively small amounts, ranging from \$1.00 to \$100.00. Over \$21,000 of this amount was raised by American Defense Fund, organized in 1964 by James Stewart of Wood Dale, Illinois (now living in Palatine, Illinois) in compliance with the laws of the State of Illinois.

Mr. Stewart volunteered his assistance, after having read in the newspapers of Mr. Otepka's intention to pursue fully all of his administrative remedies, and to take his case into the courts, if necessary. Mr. Stewart appears to have made a full accounting for the purpose of complying with State law, and also has filed an accounting with the U.S. Post Office Department.

American Defense Fund has no connection of any kind with the John Birch Society, the Liberty Lobby, or Willis Carto, according to Mr. Stewart, who stated his interest in the Otepka case was sparked by a newspaper article in September 1963, and that in the fall of 1964 he undertook to raise money for Otepka's defense after he learned that contributions from other sources were not meeting the growing legal expenses of the case. Mr. Stewart said he acted as an individual and without any assistance or prompting from any organization.

All contributions forwarded by Mr. Stewart went directly to Mr. Otepka's counsel, Mr. Roger Robb.

The remainder of the legal expense in connection with Otepka's case (between \$4,000 and \$5,000) was paid by voluntary contributions from individuals not associated with American Defense Fund (Many of these contributions were made in checks mailed directly to Mr. Otepka's counsel, and checks received by Mr. Otepka personally were turned over by him to his attorney. Mr. Otepka did not cash any such checks, nor receive or retain the proceeds therefrom.) Of these independent contributions, only one was in a very large amount, to wit: a check for \$2,500 received by Otepka's counsel on April 21st, 1964, from Defenders of American Liberties, a non-profit corporation organized under the laws of the State of Illinois for the purpose of defending civil and human rights. All other independent contributions were in very much smaller amounts.

In an effort to determine the nature of the organization known as Defenders of American Liberties, the Subcommittee staff questioned both Dr. Robert Morris, first president of the organization (who resigned in 1962 to become president of the University of Dallas, and who is now president of the University of Plano) and Mr. J. Fred Schlafly of Alton, Illinois, who succeeded Dr. Morris. Both Dr. Morris and Mr. Schlafly denied any personal connection, formal or informal, with the John Birch Society, the Liberty Lobby, or Mr. Willis Carto. One of fourteen persons identified as directors of Defenders is Dr. Clarence Manion, former Dean of Law at the University of Notre Dame, who is reported to have stated he is a member of the John Birch Society. Other directors of Defenders of American Liberties, besides Mr. Schlafly, are Mr. Roger Follansbee (Chairman of the Board) of Evanston, Illinois; Dr. Edna Fluegel, chairman of the Department of Philosophy at Trinity College, Washington, D.C.; Mr. Lyle Munson, publisher, of Linden, N.J.; Mr. Bartlett Richards,

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of Florida; General William Wilbur of Highland Park, Illinois; Mrs. Carl Zeiss of Phoenix, Arizona; Mr. Don Tobin, realtor, of Dallas, Texas; Mr. Charles Keating, Jr., of Cincinnati, Ohio; Mr. Norris Nelson of Chicago, Illinois, former publisher of the Calumet (Illinois) News and former assistant director of the Republican National Committee; and Mr. Brent Zeppa of Tyler, Texas. None of these, according to Dr. Morris and Mr. Schlafly, is known to either of them as a member of or connected with the John Birch Society or the Liberty Lobby.

TRAVELING EXPENSES

Since 1961, Mr. Otepka has made three round trips, by air, to the West Coast, including visits to San Diego and Los Angeles, California, Portland, Oregon, and Seattle, Washington, which trips were not paid for by Mr. Otepka out of his own private funds. Two of these trips were paid for by a number of individual citizens who had no formal group or organization but who had become interested in Mr. Otepka's case as a result of newspaper publicity, and wanted to hear him discuss it. Mr. Otepka talked to these individuals at informal gatherings only, and confined himself to discussion of his own case, avoiding politics or on other matters. At no time did Mr. Otepka accept an honorarium of fee for any speech or talk. The third trip referred to above was sponsored by a formal group, which desired to give Mr. Otepka an award. Because his appearance on this occasion was to be publicly advertised, Mr. Otepka sought and obtained the State

Department's approval of this trip before undertaking it.

Total amounts of income (exclusive of his own salary) available to Mr. Otepka and his family during the period in question, which became available for financing his expenses, as indicated above, were as follows:

A. Interest on savings accounts and dividends on stock owned, \$1,711.00.

B. Director's fees (Web Press Engineering, Inc., Addison, Illinois, a family corporation), \$100.00. (This corporation does not have any government contracts whatsoever, and Mr. Otepka does not own any stock in the corporation.)

C. Mrs. Otepka's gross earnings, before taxes, as a teacher employed by the Montgomery County (Md.) Board of Education: 1965, \$3,260.00; 1966, \$8,432.00; 1967, \$9,217.00; 1968, \$10,558.00. (Since 1968, when Mr. Otepka first went on leave without pay, his family has had to depend solely upon his wife's salary, and the earnings of his daughter (referred to below) to meet family living expenses.)

D. Mr. Otepka's daughter was first employed during 1968, and in that year earned \$765.00 from the Washington Post Company (WTOP-TV) and \$1,189.00 from the D. L. Printing Company, Washington, D.C.

E. By gift and bequest to Mrs. Otepka from her aunt, Mildred Simon (1966), \$3,400.00.

For ready reference, information on total amounts of income available to the Otepka family during each of the years 1961 to 1968, inclusive, is shown on the chart below.

	1961	1962	1963	1964	1965	1966	1967	1968
Interest on savings.....	101.75	80.00	80	312	23	233.00	309	254
Stock dividends.....	26.88	35.46	42	59	11	24.84	47	72
Director's fees, Web Press Engineering.....								100
Wife's gross income (salary).....					3,260	8,432.00	9,217	10,558
Daughter's gross income (salary).....								1,954
Gift and bequest to wife from aunt.....						3,400.00		
Total.....	128.63	115.46	122	371	3,294	12,089.84	9,573	12,938

3. Any formal or informal connections between Mr. Otepka and (1) Mr. Willis Carto, (2) the John Birch Society, (3) the Liberty Lobby, or (4) any other persons or organizations actively associated with Mr. Carto, the Society or the Lobby.

Mr. Otepka states he does not have and has not had any formal or informal connections with the John Birch Society, or the Liberty Lobby, or Mr. Willis Carto, or with any other persons or organizations known to him to be actively associated with any of the above three. Mr. Otepka has met Mr. Carto, having seen him two or three times, including one occasion on which he lunched with Mr. Carto at the latter's invitation. Nothing was discussed at this luncheon except the legal aspects of Mr. Otepka's case.

4. The accuracy of a report that Mr. Otepka stated in response to questions about his associations, "I am not going to discuss the ideological orientation of anyone I am associated with"; and, if the report is accurate, Mr. Otepka's opinion as to the applicability of a similar standard to others being considered for federal employment or otherwise under inquiry in connection with security matters.

Mr. Otepka states: "This is substantially the tenor of an answer which I gave on two separate occasions to two newspapermen, Mr. Neil Sheehan of the New York Times and Mr. Tim Wheeler of the Daily World, both of whom were, in my judgment, seeking to bait me into making some statement that could be used against me. I would consider such an answer entirely within the bounds of propriety if made by any person under similar questioning by such reporters in like circumstances. On the other hand, in the case of a question regarding either my associations or my associates, asked of me by a representa-

tive or official of the U.S. Government having reason and authority to inquire, I should be as fully responsive as my knowledge would permit; and I would expect any other person similarly questioned by authority and with reason to be comparably responsive."

5. Mr. Otepka's opinion as to the possibility that individuals and groups of the type generally described as "radical right" or individuals or groups generally described as "Nazi" might under certain circumstances constitute a threat to domestic security.

"From my general knowledge of history and my 27 years of experience as a security officer, I am acutely aware of the potential dangers to the security of any country from acquisition of excessive influence by totalitarian organizations or individuals of either the right or the left. I would resist with every resource at my command any attempt to establish in this country a Nazi, or Fascist, or Communist government, or any other form of totalitarianism."

6. The extent to which the issues raised in the preceding questions were investigated and considered in the course of the Executive Branch's prenomination procedures regarding Mr. Otepka.

The staff has been advised by a spokesman for the Executive Branch that Mr. Otepka's nomination followed the usual course, including an investigation by the Federal Bureau of Investigation and a security clearance under the standards of Executive Order 10450.

Mr. DIRKSEN. Mr. President, I also ask unanimous consent to have printed in the Record a synopsis which has been prepared by the Department of Justice, and the Federal Bureau of Investigation,

which is actually a synopsis of testimony by J. Edgar Hoover on May 18, 1968. I request to have printed only that testimony which begins in the middle of page 6 and goes to the end of page 12 because I think it is pertinent to this matter since Mr. Otepka is being nominated for the Subversive Activities Control Board.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

COMMUNIST PARTY—U.S.A.

In spite of their factional differences, a "communized America," said Mr. Hoover, is the "common objective" of pro-Moscow, pro-Chinese and Trotskyite wings of the communist movement. While the Communist Party, USA, has been more open in its activities since its National Convention in 1966, "its objectives have remained the same—to destroy faith in the American system, to shake confidence in its leadership, and to subvert the ideals of its younger generation," testified the FBI Director.

"Winding as a thread through the whole fabric of the Party's program is its unswerving opposition to the war in Vietnam," said Mr. Hoover. This position was never more clearly than during a speech by Party leader Gus Hall at the 50th Anniversary of the Great October Revolution held last November in Moscow. According to Mr. Hoover, Hall declared that the "Communist Party, USA, will continue to regard the struggle against United States Imperialism as its primary task until every last United States warship, tank, plane, soldier, and corporation have been removed from foreign soil."

The communists, Mr. Hoover told the Subcommittee, advocate the linking of civil rights and antiwar protests into "... one massive movement which they hope will ultimately change our Government's policies, both foreign and domestic."

In its continued effort to influence the younger generation, leading communist representatives made 54 speaking appearances on college campuses during the 1966-1967 academic year. With its desire to capitalize on the radicalism of the youthful New Left movement, the Party also hopes, through this speaking campaign, to gain recognition as a legitimate political party on the American scene.

With a self-estimated membership of 13,000 and the assistance of a reported 100,000 sympathizers, the Party plans to broaden its sphere of influence, said Mr. Hoover, through re-establishing its daily newspaper. This desire has approached realization by the inheritance of half of a Brooklyn builder's \$2,600,000 estate by three trusted Party members.

DEMONSTRATIONS

Among the 700 individuals who registered for the Washington, D.C., conference of the National Mobilization Committee to End the War in Vietnam were more than 300 members of the Communist Party, its youth affiliate, the W. E. B. DuBoise Clubs of America, and other subversive organizations. This conference with others led to the massive demonstration at the Pentagon in October, 1967, where armed Federal troops were required to turn back the demonstrators whose primary purpose was to "shut down" that establishment.

Commenting on the New Left movement, which he termed as "anarchistic," Mr. Hoover testified that its primary spokesmen have "hand in hand" with the DuBoise Clubs and the Students for a Democratic Society "... encouraged youth to resist the draft and subject the Selective Service System to harassment and agitation." Mr. Hoover emphasized that the Students for a Democratic Society is "infiltrated by Communist Party members and Party leader Gus Hall has described the

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organization as part of the 'responsible left' which the Party has 'going for us.'"

CIVIL RIGHTS INVESTIGATIONS

An all-time high of 5,366 civil rights cases were handled by the FBI during fiscal year 1967, said the FBI Director, and this represented an increase of 157 percent in the five-year period since 1962. These individual civil rights cases were in addition to more than 5,000 cases handled by the FBI dealing with alleged discrimination in places of public accommodation, public facility, public education and employment since enactment of the Civil Rights Act of 1964.

As an example of the priority attention the FBI gives to its civil rights investigations, Mr. Hoover cited the 1964 case of three civil rights workers who were murdered near Philadelphia, Mississippi. The FBI Director disclosed that this successful investigation cost an estimated \$815,000 and, at its height, required the assignment of 258 Special Agents. "During the summer of 1967," testified Mr. Hoover, assignment of FBI Special Agents to civil rights cases "at times ranged upward to nearly 1,500" men.

ORGANIZED CRIME

During the 1967 fiscal year, FBI-investigated cases resulted in a total of 197 convictions of organized crime and gambling figures. This far outstripped any prior fiscal period, said Mr. Hoover, who noted that new record accomplishments in this field were in the offing due to "more than 600 hoodlums, gambling and vice figures awaiting trial in Federal court for violations falling within the Bureau's jurisdiction."

Based on organized crime information disseminated by the FBI to local, state and other Federal agencies—which totalled more than 287,000 items during fiscal year 1967—these other agencies arrested 3,748 vice figures, mainly on charges of gambling, prostitution, and illicit alcohol; seized more than \$997,000 in currency and gambling paraphernalia; and broke up dozens of professional gambling operations handling literally millions of dollars a year in wagers. Cooperation of this type has led to the conviction of many gangland leaders cited by Mr. Hoover, who testified that the FBI has made important strides in penetrating the organized crime conspiracy.

SOVIET MENACE

Director Hoover deplored a growing public apathy "... toward communism, its danger to this country and also toward the activities of the Soviet Government." He noted that certain elements belittle United States responsibilities to the free world and incorrectly view those who speak out against communism as "alarmists."

Mr. DIRKSEN. Mr. President, finally, I wish to read portions of a letter. This could be the entire letter, but it is a letter addressed to a distinguished Member of this body, the Senator from Massachusetts (Mr. KENNEDY) by Mrs. Otepka.

Now, Mr. President, you know there are three heroes in this drama. The first one is Otto Otepka, who continued this vigilance for 5 long years, because he thought he was right and he did not permit his convictions to relent for one moment. He continued his struggle, and some 3,000 friends put up nickels, dimes, quarters, dollars, anything they could get, for the defense fund, and at last partially to sustain the Otepkas.

When the minority report against this nomination appeared, Mrs. Otepka wrote to the distinguished Senator from Massachusetts, and here is part of her letter. She stated:

As a working wife, I cannot personally remain silent regarding the implications of your question that you be provided with

"the precise sources and amounts of the financing for Mr. Otepka's living expenses since 1961."

I want the people of this country to know that the economic reprisals taken against my husband for telling the truth to a congressional committee necessitated the following measures in order to save money for our use in the long battle to obtain justice:

1. I cut my husband's hair every two weeks.
2. I made all my clothes and my daughter's.
3. I washed and ironed my husband's shirts.
4. I dry cleaned all the family clothing.
5. I canned tomatoes and other vegetables from our home garden.
6. My husband cleaned and froze his catches of fish and crabs for frequent summer meals.
7. We seldom ate family meals in restaurants.
8. My husband bought ready-made, inexpensive but serviceable suits of clothing.
9. I went to work in order to supplement our income.

Mrs. Otepka began teaching school in 1965 in order to carry on this vigil with her husband. She is the heroine in this drama which has lasted for 5 years.

Speaking for myself, as a member of the Internal Security Subcommittee, I was determined, not only because of Drew Pearson, but also many others that I could name, that we would fight this thing through to a finish.

The finish comes today.

Mr. Otepka should have a unanimous vote of the Senate for the task that he carried on, because he has been a tremendous public servant, with a deep conviction for truth and a deep devotion to his country.

Thus, Mr. President, I am prepared to let the case rest right there. That is all I have to say.

Mr. KENNEDY. Mr. President, the Subversive Activities Control Board is an independent Federal agency which is supposed to decide whether organizations are subversive, and whether individuals are members of subversive organizations. The Board received its assignments in 1950 and 1954, with Congress overriding President Truman's veto of the 1950 legislation. Somehow, nearly 20 years later, it seems less obvious to us why five men should be paid \$36,000 a year just to give us their opinions on which groups and individuals are "subversive." And in recent years the Board in fact has atrophied as its irrelevance has become apparent, and as its functioning has been constrained by Court decisions. Nevertheless, the legislation remains on the books, the Board continues to exist, and there still stands a vestige of responsibility.

We are faced here today with two basic questions:

First, does it make any sense at all to confirm a fifth member to an agency which has not had enough work even to keep one member busy? The answer to that question is easy. In a time of budgetary restraint, personnel freezes, and high defense costs, we set a bad example by allowing a job to be filled just for the sake of filling it.

Second, do Mr. Otepka's background and record indicate that he will be able to perform properly the duties of a member of the SACB? As I have indi-

cated, these duties are not very onerous. The demands on the members' time and energy are minimal. Nevertheless, to the extent that the Board may at times be called upon to decide cases, its duties are sensitive and subtle ones, indeed. The Board acts only on the petition of the Attorney General, so that it cannot run away on its own. Yet, since it is intended as a protection against the over-enthusiasm of that official, it must undertake an independent and open-minded review of his determinations. If it is not prepared to be even more demanding than the Attorney General in its standards of proof, its insistence on fair procedure, and its recognition of the constitutional liberties of speech and association, then truly it serves no function whatsoever. Since this is the essence of its role—interposing a barrier of both substance and procedure against the possibility of excesses by the executive branch—the members of the Board should be people who have demonstrated a dedication to due process, a commitment to civil liberties, and a faith in the ability of our society to tolerate the broadest departures from orthodoxy.

I regret I cannot conclude that the nominee before us meets these qualifications. The fact is that he was the subject of disciplinary action by his superiors in the course of his former employment. Their action was sustained by the Civil Service Commission and by his subsequent superiors of the opposite political party—including, I might say, the distinguished Secretary of State Mr. Rogers, who was a former Attorney General of the United States. They are the ones who are fully familiar with his performance, and they determined that he was not suitable for the job he held, a job not unrelated to the duties of the Board. We thus have what we lawyers call an "a fortiori" situation. If this nominee was found incapable of holding a minor security post within an executive agency, how can he be qualified to hold a higher position with a security organization whose potential jurisdiction runs everywhere? We would have to have some showing of new facts evidencing a change in the man, or in the circumstances of his demotion, to justify giving him a higher post. None has been presented. In this context, there is the highest burden of proof on the supporters of the nomination to demonstrate the nominee's judgment, sensitivity, and discretion, but the additional facts about the nominee which have become available have hardly contributed to that demonstration.

I am hopeful that the Senate will exercise all due care in considering this appointment. Surely, this is not the case of a Cabinet or sub-Cabinet official who is part of the President's team and whose appointment is thus presumptively with appointment is thus presumptively within the broadest possible discretion of the President. Instead, we are free to vote our consciences on the present nomination without any presumptions.

Mr. President, because the SACB does not need a fifth member, and because the present nominee has not demonstrated the qualifications which a member of that agency should have, I believe that

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we should not consent to this appointment.

Mr. MILLER. Mr. President, I hope that the motion to recommit this nomination is defeated.

It is understandable why some well-intentioned people may have been misled by some of the statements made about this nomination. All of us have read and heard suggestions that, because certain individuals supported Mr. Otepka during his long ordeal with the State Department, therefore, Mr. Otepka is branded with their particular philosophy. Those who seek to persuade their readers or listeners with such guilt-by-association logic do a disservice not only to Mr. Otepka but also to the people of our country.

A vote against this motion and a vote to confirm Mr. Otepka will put the Senate clearly on record that it will take more than the guilt-by-association technique to block the appointment by the President of one whose loyalty to our country and opposition to its enemies are beyond question.

Mr. NELSON. Mr. President, I shall vote for recommitment and against confirmation of Mr. Otepka. After searching the statutes and looking at the work of the Board, I cannot find that it has a function to perform that could not better be performed by existing agencies and that, therefore, the Board itself should be allowed to pass quietly into oblivion.

Mr. President, for 20 months, from April 1966 until January 1968, the Subversive Activities Control Board did not have a single hearing. It is a Board with five members at salaries of \$36,000 per year for each member, a general counsel at \$26,000, an assistant general counsel at \$20,200 and office expenses of \$94,000 for a total 1969 budget of \$344,000.

During the 18 months since January 1968, the Board has held six hearings. During the approximately 1,050 working days in the past 3 years and 2 months, the Board has held 14 days of hearings and 6 days of executive sessions on these hearings.

If the Board conducts hearings at the same pace in the future as in the past, the cost per case heard will be about \$100,000. Or put another way, the Board will do about 1 good day of work for every 50 working days, which I submit is a pretty leisurely pace even for an institution as jaded as the Federal bureaucracy.

The fact is the Board does not have any function that cannot be better performed by the Attorney General, the FBI, and the appropriate committees of the Congress.

The Board has no power to investigate or initiate any action on its own.

The responsibility of investigating and gathering evidence on subversive activities of individuals and organizations is in the Congress, the FBI, and the Attorney General.

It seems rather ironic to continue spending \$344,000 per year on this Board when most of its functions have been terminated by Court decisions and

the rest could better be handled by other executive agencies.

The Board ought to be abolished; therefore, I shall vote against confirmation.

Mr. PASTORE. Mr. President, my position on this particular appointment is philosophic, and not personal. I quite agree with those who have said that the usefulness of this Board is past; that it should be abolished; that we are spending a lot of money for work that could be performed by the Justice Department or FBI. For that reason, I shall vote to recommit. If that vote fails to carry, however, I cannot carry my vote against the individual and, therefore, I shall vote to confirm the nomination.

Mr. DIRKSEN. Mr. President, it would be a little refreshing on the Senate floor if, instead of telling the partial facts, the whole facts are related to the Senate for its guidance.

The distinguished Senator from Wisconsin just reflected on the Subversive Activities Control Board for 20 months of inactivity. But what is the rest of the story? Well, the rest of the story is that they were under an inhibition by a decision of the appellate court in Washington and, likewise, the Supreme Court, and they could not move a muscle. Meanwhile, the Senator's colleague from Wisconsin was trying to get the Board abolished by appearing before the Appropriations Committee to take away the funds of the Board.

I undertook to meet that Supreme Court decision, and, with staff, we had to labor to put that Internal Security Act in order to comply with the decision of the court, and it was not an easy job. But when we got it done, and the Senate put the seal of approval upon it, and likewise the House, I then went to Ramsey Clark, the Attorney General, and said, "Under the law, you start sending cases to that Board, or you will not have heard the last of it," and I was after Ramsey Clark to do it. Finally, he sent some cases to the Board, and for the first time they could go to work.

So there were 15 months of inactivity, laboring under the difficulty of the Warrent court—if you have got to know the truth. That is where the decision came down. We have been around here for only 5 months. We have had an Attorney General for only 5 months, or a little less. That Board, just last week, was in California and it has conducted some very successful hearings.

Why do they not tell the Senate the whole story? It is just about time that we quit sharing with the Senate a few crumbs of fact so that they can mislead themselves.

The motion to recommit the nomination ought to be overwhelmingly voted down, in justice to Otto Otepka, because of the size of the vote by which his nomination was reported by the Judiciary Committee of the Senate.

Mr. President, we can now vote.

Mr. EASTLAND. Mr. President, the nomination of Otto F. Otepka to be a member of the Subversive Activities Control Board has been on the Senate

Calendar for several weeks.

This nomination was approved by the Committee on the Judiciary by a vote of 12 to 3. There is a printed report, with individual and minority views.

In discussing this nomination, it would serve no useful purpose for me to repeat what has already been said in the committee report; except that I do want to affirm my own adherence to that report, and my own very strong feeling that Mr. Otepka is highly qualified, by temperament, education, and experience, to fill the position for which he has been nominated.

For the benefit of any who may not have given the matter particular attention before now, it might be well to put a summary of the Otepka case into the record.

The story of the Otepka case has been summarized many times. One of the best jobs was done by Charles Stevenson and William J. Gill, whose article appeared in the August 1965 issue of the Reader's Digest.

Mr. President, I ask that the full text of this article may be inserted in the Record at this point as a part of my remarks.

There being no objection, the article was ordered to be printed in the Record, as follows:

THE ORDEAL OF OTTO OTEPKA

(By Charles Stevenson, with William J. Gill)

Why have State Department employees been using the tactics of a police state to oust a dedicated security officer whose only sin seems to be loyalty to his country?

A few minutes before noon on Friday, June 27, 1963, Otto F. Otepka, chief of the U.S. State Department's security-evaluations division, was summoned to the office of his immediate superior, John F. Reilly, Deputy Assistant Secretary of State for Security. Reilly tossed him a one-page memorandum. "Effective immediately," the memo said, "you are detailed to a special project updating the Office of Security Handbook. You will remove forthwith to Room 38A05."

Within a half-hour of this ouster, Otepka's office safes and file cabinets, which contained extensive security information on State Department personnel, were seized. The same thing was happening to two veterans security officers who worked under Otepka.

These police-state tactics were used not against men suspected of subversion. They were used against men who had been trying to fight subversion—the professional "security men" whose job it is to try to keep the government service free of communists and persons who might fall under their influence.

The story of Otto Otepka, a tall, quiet, darkly handsome man of 50, is still without an ending, and on its outcome hang two vitally important issues. One is whether we shall, without hysterics and false accusations, fight attempts to subvert our government. The other is whether Congress—the elected representatives of the people—shall preserve our right to oversee the behavior of the officials in the executive branch.

Many kinds of subversion are practiced today by the communists. One of the most difficult to detect is "policy sabotage," a device by which seemingly innocent decisions cover up disruption and delay of crucial activities. A classic example occurred in the aftermath of World War II: Harry Dexter White, Assistant Secretary of the Treasury; withheld vitally needed shipments of gold

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ordered by Congress to bolster Chiang Kai-shek's currency, thus contributing to the collapse of the currency. The Nationalist armies were left unpaid and starving, an easy prey to Mao Tse-tung's communists.

This type of sabotage is doubly dangerous because it creates suspicion and confusion. Many who supported the wild charges of the late Sen. Joseph McCarthy in the early 1950's, for instance, failed to distinguish between policy sabotage and errors of judgment, and they besmirched the reputation of innocent people. Otto Otepka was never such a zealot. His very background made him respect the underdog. The son of an immigrant Czech blacksmith, he had come to Washington in 1936 as a government messenger. In 1942, after earning a law degree at night at Columbus University (now the law school of Catholic University), he became an investigator for the Civil Service Commission. Following Navy service in World War II, he returned to the commission, became an expert on communist subversion and supervised a large staff analyzing cases under the Federal Employees Loyalty Program.

It was, in part, his sense of perspective that led one veteran security officer to call him "the best evaluator in government." Secretary of State John Foster Dulles, on June 15, 1953, brought him into the State Department to carry out President Eisenhower's Executive Order 10450, designed to set security standards for all federal agencies.

By 1957 Otepka was deputy director of the Office of Security—the Department's highest civil-service security job—and working head of State's global personnel-security organization. In 1958 the State Department awarded him its Meritorious Service Award. The citation, signed by Secretary of State Dulles, declared that Otepka "has shown himself consistently capable of sound judgment, creative work and the acceptance of unusual responsibility." His 1960 departmental efficiency report noted that to his knowledge of communism and its subversive efforts in the United States "he adds perspective, balance and good judgment."

Yet, as he was receiving these plaudits from his superiors, Otepka was incurring the enmity of an influential clique in the Department who chafed at security procedures. Soon after the Kennedy administration took over in 1961, these persons began to act. Otepka found his recommendations were being ignored or overruled.

Then there occurred the strange case of William Wieland, a controversial foreign-service officer who had been Caribbean desk officer during the early days of Fidel Castro. The Senate Internal Security Subcommittee, investigating Wieland's role in U.S. support of the Cuban revolution, declared that he could not "escape a share of the responsibility" for Castro's takeover. Among other things, the subcommittee uncovered evidence that Wieland had withheld crucial intelligence reports warning of Castro's communist ties.

Conducting an investigation under specific Department orders, Otepka in 1961 reported he found no proof Wieland was a communist, but he amassed evidence that he was responsible for "policy impedance" and had "lied" both to the Senate subcommittee and to State's own investigators. Otepka recommended that higher authorities consider dismissing him as unsuitable.

For an answer, on September 18, 1961, William Boswell, an old-line foreign-service officer and at the time Otepka's immediate superior, ordered Otepka to clear Wieland immediately without the required written findings from the Deputy Under Secretary for Administration. Otepka refused.

The Department made its first formal move to get rid of Otepka less than six weeks later. On November 1, 1961, Boswell called Otepka into his office and announced that 25 Security

Office jobs were being eliminated. Otepka was being demoted to chief of a 32-man evaluation staff.

Many men would have quit in disgust. Otepka stayed on, even though his old job, supposedly abolished for economy reasons, was later restored with someone else filling it.

Then John F. Reilly arrived as the new director of the Office of Security. Now Otepka's recommendations and memorandums were bounced back with critical notations. And weird things began to happen. At 10:30 p.m. on March 24 Otepka returned to his office after an evening of bowling and startled two of Reilly's aides there. Later, an electronics technician told him, "Your phone is bugged." Another reported that there were concealed listening devices planted in his office. One weekend his office safe was drilled open. And a mystery man with binoculars sat outside Otepka's home night after night.

By early 1963 the situation epitomized by the harassment of Otepka had become so critical that the State Department's entire personnel security apparatus was on the verge of collapse. The Atomic Energy Commission, in granting access to atomic secrets, refused to accept State Department investigations, and the Civil Service Commission reported to the National Security Council deficiencies and shortcomings in State's security operations.

At this point, the Senate Internal Security Subcommittee resumed its hearings. During February and March 1963 it asked Otepka whether the Department was clearing possible security risks despite warnings from the Evaluation Division. Otepka declared it was. Reilly denied this. As the hearings progressed, more and more discrepancies developed between Otepka's testimony and Reilly's rejoinders. The contradictions were so serious that on May 23 subcommittee counsel J. G. Sourwine called Otepka to his Capitol Hill office. "One of you is lying under oath," he said. "If you have evidence to prove you're right, you'd better produce it."

That night Otepka paced his basement study at home. "The Code of Ethics for Government Employees," adopted by Congress in 1958, requires all civil servants to put loyalty to country above loyalty to government departments. Federal statutes specifically guarantee their right "to furnish information to Congress shall not be interfered with."

Shortly thereafter Otepka sent the subcommittee 25 unclassified, two "confidential," six "official use only," and three "limited official use" documents and memos. Point by point these papers upheld the truth of Otepka's testimony.

Four weeks later, on June 27, Otepka was given the meaningless assignment of updating the Security Office Handbook.

On August 14, 1963, Otepka suffered the next step in his degradation—he was accused by his superiors at State of violating the World War Espionage Act. He was charged with spying for the U.S. Senate by turning over "confidential" documents (the papers which cleared him of perjury). After three days of questioning, the FBI threw out the case against him.

Then, on September 23, 1963, the State Department fired Otepka for actions "unbecoming an officer of the Department of State" (specifically, supplying legitimate information to U.S. Senators). Otepka appealed the case, under State Department regulations. Sen. Thomas Dodd, vice chairman of the Internal Security Subcommittee, protested to Secretary of State Rusk, but Rusk reaffirmed the proposed dismissal. Dodd then stormed onto the Senate floor on November 5, castigating the Department for "chasing the policeman instead of the culprit," and he exploded a bombshell: "Although a State Department official has denied under oath a tap on Otepka's telephone, the subcommit-

tee has proof that the tap was installed"—a clear violation of State's own regulations.

That night the Department's top legal advisers called in Reilly and Elmer D. Hill, an electronics technician, and had them sign letters asking the subcommittee for the right to "clarify" and "amplify" their earlier sworn testimony that they had not tapped Otepka's telephone. Reilly's story now changed to:

"On March 18 I asked Mr. Elmer D. Hill to undertake a survey of the feasibility of intercepting conversations in Mr. Otepka's office. I made it clear to Mr. Hill that I did not wish any conversations to be intercepted at that time." But days later Hill confessed to the subcommittee that he had tapped "a dozen, perhaps more" of Otepka's telephone conversations under Reilly's orders.

Even after that, despite a written protest approved by the entire Senate Judiciary Committee, Secretary Rusk declared that prosecution of the Otepka case would be "vigorously pursued." Security Office division chiefs were officially notified that all who "are disloyal" to the Secretary will be "identified and ousted. We have lost face, and it's up to us to regain it."

Since then the State Department has allowed little to leak out. Otepka, waiting for the chance to fight for reinstatement, still goes to the State Department every Monday through Friday. In accordance with Civil Service rules, he still draws his \$19,310 annual salary, but he is not given any useful tasks. He is, in effect, in exile within the Department, and many of his associates are afraid even to say hello to him.

Seldom has an issue reached so deep into the roots of our governmental system. For if Otepka loses his appeal, now set for October 11, it will set new precedents for conduct of government. Men like William Wieland, who withheld information about Castro, will know that they are safe from accountability. He is still in the State Department and has since been promoted. Men like Reilly, who deceived a Senate subcommittee, will know that playing the bureaucracy's game pays off—he presently holds a high-paying job with the Federal Communications Commission. And the thousands of dedicated public officials—the Otepkas and those in other government agencies—will have learned their lesson: In government, if you see something going wrong, forget it. Says Senator Dodd: "If those forces bent on destroying Otepka and the no-nonsense security approach he represents are successful, who knows how many more Chinas or Cubas we may lose?"

The American people can offer only one answer: Loud, sustained protest to President Johnson and their representatives in Congress. Until the men of Otto Otepka's stamp are safe in their jobs, with full authority to enforce a wise security program, the nation can have no reasonable assurance it is safe from enemies within.

Mr. EASTLAND. Since the two members of the committee who submitted minority views have raised the question of Mr. Otepka's activities in the State Department as an implied reason for disapproving the pending nomination, some discussion of this aspect of the Otepka case certainly appears pertinent.

The fact is, Mr. President—the sad fact is—that the actions taken against Mr. Otepka by the Department of State were in the nature of reprisals because he told the Senate Internal Security Subcommittee the truth, and disclosed wrongdoing and bad security practices within the Department.

Various issues were involved in the Otepka case.

One of the most serious of these issues was the right of a committee of this

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body to have access to basic documentary evidence for the purpose of establishing the truth. In this particular case, the documentary evidence was essential because officials of the Department had lied to the committee about the facts. The hearing record showed a sharp conflict of testimony, with statements made by Mr. Otepka having been flatly contradicted by subsequent testimony from officers of the Department superior to him in rank.

At this point the subcommittee demanded, and I think quite properly demanded, that Mr. Otepka bring in whatever documentary evidence might be available to support his testimony, which had been contradicted by his superiors.

Mr. Otepka met this demand by producing indisputable evidence that he had indeed told the truth, and that his superiors had lied.

This was the transmission of documents which has been referred to as a "leak." But, Mr. President, the word "leak" carries the connotation of being somehow surreptitious. There was nothing surreptitious about the production of this information by Mr. Otepka. Mr. Otepka was called to the offices of the subcommittee, and there it was demanded of him that he produce evidence, if he could, to resolve the contradictions between his own testimony and that of his superiors. Mr. Otepka produced such evidence, and it was put in the subcommittee's hearing record, and the facts with respect to the committee's demand for the evidence and Mr. Otepka's production of it were spread on the record.

If witnesses before congressional committees cannot give truthful testimony about wrong-doing or bad security within the executive branch, without facing severe reprisals from their superiors, how are the committees of Congress going to get the facts upon which to base sound legislative action?

We uphold our own prerogatives, as Members of this body, when we support the right of Otto Otepka to do what he did.

Now, Mr. President, there are some common misconceptions about the Otepka case which should be corrected.

In the first place, Mr. Otepka did not come to the committee as a voluntary informant. He was called before the committee after State Department officials had identified him as the one individual most likely to have particular information which the committee wanted.

After he came before the committee, Mr. Otepka was not a ready critic of either the State Department or of his superiors, or any of them. On the contrary, he did everything a witness honorably could do to avoid saying anything critical of either the Department or of other departmental officers.

Another misconception about the Otepka case is that the State Department's original order with respect to Otepka was upheld on appeal. This is not the case. The original order called for Otepka's dismissal. This was found not justified. The original order then was modified so as to provide for a reprimand and a reduction in grade, with a cut in

pay. Mr. Otepka continued to appeal, for he felt he had done nothing deserving of any punishment. On that I agree with him.

It is noteworthy that the modification of the State Department's original order dismissing Otepka made it much more difficult for him to carry on his appeal, since a reprimand is considered to be an administrative action from which there is no right of appeal, and the right of appeal from a reassignment is much more narrow than the right of appeal from an order of dismissal.

When the State Department announced its dismissal proceedings against Otto Otepka, the Department stated that 13 separate charges against Otepka had been made; and these 13 charges were made public.

Some of these charges, couched in the language used by the Department, sounded quite serious.

For instance, there was a charge that Mr. Otepka was responsible for mutilating classified documents in violation of a criminal statute.

There was a charge that he had been responsible for improper declassification of documents.

For more than 3 years, the Department of State circulated these charges against Mr. Otepka. But when it finally got around to trying the case, the Department dropped 10 of the 13 charges.

Mr. Otepka asked for an opportunity to bring in evidence with respect to the charges the Department had dropped. He argued that he should be permitted to show that these charges were false. He argued further that the Department's action in bringing false charges against him, and then dropping those charges just before the hearings, was in itself evidence of harassment.

Mr. Otepka was denied the right to bring in any evidence with respect to the charges which the Department had chosen to drop. The Department, however, in making public announcement that the hearing on Mr. Otepka's appeal was finally about to begin, recapitulated all 13 of the charges originally made, in spite of the fact that notice already had been given to Mr. Otepka that 10 of the 13 charges were being dropped.

The only three charges retained, after 10 charges were dropped, involved allegations that Mr. Otepka gave confidential documents to an unauthorized person.

There was never any doubt at all about the facts of what happened. As I have pointed out, these facts were spread on the committee's record. The only questions at issue involved how to interpret the facts.

Mr. Otepka produced certain documents in response to the demand by the committee for evidence to establish whether Otepka, or his superiors in the State Department, had given false testimony.

Was the production of these documents, under the circumstances, a violation of an Executive order?

Was the chief counsel of the Internal Security Subcommittee of the United States Senate a so-called "unauthorized person," in spite of the fact that the documents were received by him in his official capacity, and for the purpose of

having them placed in the committee's record?

Giving a document to the top staff man of a Senate committee, for inclusion in the committee's record, is just one way of giving the document to the committee. Is a Senate committee to be regarded as unauthorized to receive confidential documents?

Of course, committees of the Congress are authorized to receive confidential documents; and if committee staff members cannot receive communications for the committee, it will be difficult indeed for the committees to function.

There appears to be some danger that efforts may be made to induce Senators to vote on this nomination in accordance with their views on what powers should be exercised by the Subversive Activities Control Board, and whether Congress should take action to shore up portions of the Subversive Activities Control Act rendered inoperative or ineffective as a result of Supreme Court decisions.

Of course, neither of these issues is involved in the question now before us.

Unless there is good reason to believe this nominee is unfit for the job to which he has been nominated, the Senate should advise and consent to his appointment.

Nothing in the Otepka case provides any such reason.

Otto Otepka is a man who would not bend and did not break.

I do not mean to say that Otto Otepka lacks flexibility, where flexibility is an asset. He proved himself a good administrator, able to see both sides of a problem, quick to recognize and appreciate the viewpoints of others and willing to settle an administrative disagreement by meeting the other party half way in compromise.

Over a period of years, Mr. Otepka had substantial responsibilities for dealing with Members of the Congress, and proved himself both patient and obliging.

Otto Otepka was all these things—flexible, accommodating, patient, obliging—up to a point. Beyond that point he could not be budged. That point was where duty, honor, or morality became involved. Otto Otepka would not compromise on a matter of principle. It has always been part of his creed to do his duty as he sees it, and he has never permitted himself to be swayed from that position: not by threats, not by cozenings, not by force, and not by considerations of personal advantage.

Here lies the basis for many of the troubles which have been laid on Otto Otepka. Those who have tried unsuccessfully to coerce him, to bend him to their will against his sense of duty, his sense of honor, his loyalty to the interests of his country, or his moral principles, have wound up in a position where they either had to hate Otepka or hate themselves; and they have chosen to hate Otepka.

Mr. Otepka deserves from this body, at the very least, a vote of confidence. I hope and believe, Mr. President, that the Senate will confirm this nomination by such a substantial majority that nowhere in the world will it be possible to

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misunderstand or misinterpret the Senate's position.

Mr. PROXMIER. Mr. President, during the past congressional session, several Presidential appointments and nominations have been objected to by various Members of Congress. I believe that this change in the carte blanche nomination approach for a Presidential appointment is a healthy sign. Although I intend to vote for the nomination of Otto Otepka to the Subversive Activities Control Board, I want to explain my reasons for doing so.

I am now as adamantly opposed to the Subversive Activities Control Board as I ever was, if not more so. This Board is a completely do-nothing Board which promises to continue that way unless the Supreme Court diametrically reverses its position with regard to the constitutionality of the Board's authority. It is literally in a governmental limbo.

To decide a man's qualifications for this position is completely irrelevant. In this case, a blank résumé would suffice for the job. That is why I do not believe it is fair or reasonable to judge the personality or qualifications of Otto Otepka. It is not a case of the man, but the job. My point is that the job should not exist, no matter who should be appointed.

In the 18 years of its existence, the Board has attempted to register as subversive approximately 70 individuals and organizations. But not one has actually been registered. This was because every attempt to register suspected subversives was thwarted by the courts. Attempts to register individuals merely for their associations with an undesirable organization were decided by the courts as unconstitutional.

Having no power and no authority the Board languished. With no work to do one might have expected Congress to save the American taxpayer the cost of keeping the Board in existence. But that would have been expecting too much. Through all the years, Congress went right on appropriating more than \$300,000 a year while Board members and other employees went right on enjoying what must have been—and still is—the softest do-nothing job in Washington.

In 18 years the Board has wasted more than \$5 million, which could, and should, have been spent on education, crime control, housing, or medical research, to cite just a few worthwhile purposes. Or the \$5 million could have been retained in the Treasury to help to balance the budget or to help to provide for the possibility of reducing taxes. Admittedly, \$5 million is not a tremendous sum, but I think we are entitled to expect something for our money. The SACB has been less than useless: it has brought us back to the age of the witchhunt, without contributing one iota to the Nation's security.

I call upon Congress not to grant the request for appropriations of \$365,000 for the Board for the coming fiscal year. It is high time that Congress sees the folly of perpetuating this outrageous exercise in futility, and relegate the SACB to the history books. That is where it belongs.

Mr. TYDINGS. Mr. President, we are called on today to pass upon a presiden-

tial nomination requiring the advice and consent of the Senate. I raised a number of questions with respect to the nominee when the nomination was before the Judiciary Committee, and finally concluded that I could not concur in that committee's favorable recommendation of the nomination to this body. At this time I want to clarify the reasons for my opposition to the nomination of Mr. Otto Otepka to be a member of the Subversive Activities Control Board.

As we are all aware, when that Board was first created it was envisioned as a highly important watchdog over American security. In the intervening years, it has been considerably delimited in function by court decisions, to the point at which there has been considerable discussion in this body as to the Board's continued viability. We have chosen, however, to continue its lifespan.

No one will deny the strategic importance of national security, although some may debate the most effective means of insuring it. But if we are going to have top level organizations designed to insure national security, we must have top level personnel administering them. The most potent and potentially effective security mechanism will not operate to achieve its objectives unless the people who are at its helm are capable of directing it. Mr. Otepka's record does not show him to be thusly qualified.

Rather, it reveals that, once having held a security post at the State Department, he conducted himself in such a manner that his superiors concluded it was necessary to remove him from that post. Their action was sustained by the last Secretary of State Dean Rusk, and, very significantly, after investigation was not reversed by the present Secretary William Rogers. I do not understand how the nominee, thought by the present administration to be unfit for the lesser office in the State Department, could at the same time be thought qualified for this greater office. It is a peculiar situation, at the least, where a post which raises to the status of requiring the advice and consent of the Senate is thought to require less qualification the same field of competence than one which is within the sole control of a Cabinet-level officer of the executive branch.

I strongly believe that the President should be given as much freedom as possible in making appointments which are not covered by the Civil Service. I equally believe, however, that there is a constitutional obligation in the function of advice and consent which requires more than a rubberstamp effort in the Senate. At the least, it is a requirement that in giving our approval we be assured that the candidate is fundamentally qualified to hold the office to which he is to be appointed.

After considerable deliberation, based on careful study of the nominee's record, I believe that this body would be remiss in its constitutional obligations if it consented to this nomination.

The PRESIDING OFFICER. The question is on agreeing to the motion to recommit the nomination. The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the

Senator from Michigan (Mr. HART), the Senator from Utah (Mr. MOSS), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I also announce that the Senator from North Dakota (Mr. BURDICK), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK) would vote "nay."

On this vote, the Senator from Michigan (Mr. HART) is paired with the Senator from Alaska (Mr. STEVENS). If present and voting, the Senator from Michigan would vote "yea," and the Senator from Alaska would vote "nay."

On this vote, the Senator from Iowa (Mr. HUGHES) is paired with the Senator from Georgia (Mr. TALMADGE). If present and voting, the Senator from Iowa would vote "yea," and the Senator from Georgia would vote "nay."

Mr. SCOTT. I announce that the Senator from Hawaii (Mr. FONG) is necessarily absent.

The Senator from Alaska (Mr. STEVENS) is detained on official business and is paired with the Senator from Michigan (Mr. HART). If present and voting, the Senator from Alaska would vote "nay," and the Senator from Michigan would vote "yea."

The result was announced—yeas 35, nays 56, as follows:

[No. 47 Ex.]

YEAS—35

Anderson	Hatfield	Montoya
Brooke	Inouye	Muskie
Cannon	Jackson	Nelson
Case	Javits	Pastore
Church	Kenney	Pell
Cooper	Magnuson	Ribicoff
Cranston	Mansfield	Symington
Eagleton	McCarthy	Tydings
Fulbright	McGee	Williams, N.J.
Goodell	McGovern	Yarborough
Harris	Metcalf	Young, Ohio
Hartke	Mondale	

NAYS—56

Aiken	Ellender	Murphy
Allen	Ervin	Packwood
Allott	Fannin	Pearson
Baker	Goldwater	Percy
Bayh	Gore	Picouty
Bellmon	Griffin	Proxmire
Bennett	Gurney	Randolph
Bible	Hansen	Russell
Boggs	Holland	Saxbe
Byrd, Va.	Hollings	Schweiker
Byrd, W. Va.	Hruska	Scott
Cook	Jordan, N.C.	Smith
Cotton	Jordan, Idaho	Spong
Curtis	Long	Stennis
Dirksen	Mathias	Thurmond
Dodd	McClellan	Tower
Dole	McIntyre	Williams, Del.
Dominick	Miller	Young, N. Dak.
Eastland	Mundt	

NOT VOTING—9

Burdick	Hart	Sparkman
Fong	Hughes	Stevens
Gravel	Moss	Talmadge

So the motion to recommit was rejected.

Mr. DIRKSEN. Mr. President, on the question of whether the Senate will advise and consent to the nomination of Otto F. Otepka to be a member of the Subversive Activities Control Board, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Otto F. Otepka to be a member of the Subversive

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Activities Control Board? On this question the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Michigan (Mr. HART), the Senator from Utah (Mr. MOSS), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I also announce that the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from South Dakota (Mr. McGOVERN), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK) would vote "yea."

On this vote, the Senator from Michigan (Mr. HART) is paired with the Senator from Alaska (Mr. STEVENS). If present and voting, the Senator from Michigan would vote "nay" and the Senator from Alaska would vote "yea."

On this vote, the Senator from Georgia (Mr. TALMADGE) is paired with the Senator from Iowa (Mr. HUGHES). If present and voting, the Senator from Georgia would vote "yea" and the Senator from Iowa would vote "nay."

Mr. SCOTT. I announce that the Senator from Hawaii (Mr. FONG) is necessarily absent.

The Senator from Alaska (Mr. STEVENS) is detained on official business and is paired with the Senator from Michigan (Mr. HART). If present and voting, the Senator from Alaska would vote "yea" and the Senator from Michigan would vote "nay."

The result was announced—yeas 61, nays 28, as follows:

[No. 48 Ex.]

YEAS—61

Aiken	Ellender	Pastore
Allen	Ervin	Pearson
Allott	Fannin	Percy
Anderson	Goldwater	Prout
Baker	Griffin	Proxmire
Bayh	Gurney	Randolph
Bellmon	Hansen	Russell
Bennett	Hatfield	Saxbe
Bible	Holland	Schweiker
Boggs	Hollings	Scott
Byrd, Va.	Hruska	Smith
Byrd, W. Va.	Jordan, N.C.	Spong
Cannon	Jordan, Idaho	Stennis
Cook	Long	Symington
Cotton	Mathias	Thurmond
Curtis	McClellan	Tower
Dirksen	McIntyre	Williams, N.J.
Dodd	Miller	Williams, Del.
Dole	Montoya	Young, N. Dak.
Dominick	Mundt	
Eastland	Murphy	

NAYS—28

Brooke	Inouye	Muskie
Case	Jackson	Nelson
Cooper	Javits	Packwood
Cranston	Kennedy	Pell
Eagleton	Magnuson	Ribicoff
Fullbright	Mansfield	Tydings
Goodell	McCarthy	Yarborough
Gore	McGee	Young, Ohio
Harris	Metcalfe	
Hartke	Mondale	

NOT VOTING—11

Burdick	Hart	Sparkman
Church	Hughes	Stevens
Fong	McGovern	Talmadge
Gravel	Moss	

So the nomination was confirmed. Mr. MANSFIELD. Mr. President, I move that the President be notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the joint resolution (S.J. Res. 123) to extend the time for the making of a final report by the Commission To Study Mortgage Interest Rates.

The message also announced that the House had passed a joint resolution (H.J. Res. 790) making continuing appropriations for the fiscal year 1970, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE JOINT RESOLUTION REFERRED

The joint resolution (H.J. Res. 790) making continuing appropriations for the fiscal year 1970, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

H.R. 1437. An act for the relief of Cosmina Ruggiero;

H.R. 1939. An act for the relief of Mrs. Marjorie J. Hottenroth;

H.R. 1960. An act for the relief of Mario Santos Gomes;

H.R. 2005. An act for the relief of Lourdes M. Arrant;

H.R. 4600. An act to amend the act entitled "An act to incorporate the National Education Association of the United States," approved June 30, 1906 (34 Stat. 804);

H.R. 5136. An act for the relief of George Tilson Weed; and

H.R. 6607. An act to confer U.S. citizenship posthumously upon Sp4C. Klaus Josef Strauss.

EXECUTIVE COMMUNICATIONS, ETC.

The PRESIDING OFFICER laid before the Senate the following letters, which were referred as indicated:

REPORT ON THE SIOUX TRIBE OF INDIANS OF THE CHEYENNE RIVER RESERVATION, SOUTH DAKOTA AGAINST THE UNITED STATES OF AMERICA

A letter from the Chairman, Indian Claims Commission, reporting, pursuant to law, that proceedings in docket No. 114, *The Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota, Plaintiff, v. The United States of America, Defendant*, have been concluded, with a final judgment in the sum of \$1,300,000 entered against the defendant and in favor of the plaintiffs (with accompanying papers); to the Committee on Appropriations.

REPORT OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION AGAINST THE UNITED STATES OF AMERICA

A letter from the Chairman, Indian Claims Commission, reporting, pursuant to law, that proceedings in docket Nos. 350-A, 350-E, and 350-H, *The Three Affiliated Tribes of the Fort Berthold Reservation, Plaintiff, v. The United States of America, Defendant*, have been concluded, with a final judgment in the sum of \$1,850,000 entered against the defendant and in favor of the plaintiffs (with accompanying papers); to the Committee on Appropriations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the administration and effectiveness of the work experience and training project, V-277, in Los Angeles County, Calif., under title V of the Economic Opportunity Act of 1964, Department of Health, Education, and Welfare, dated June 23, 1969 (with an accompanying report); to the Committee on Government Operations.

STATISTICAL APPENDIX TO ANNUAL REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES

A statistical appendix to the Annual Report of the Secretary of the Treasury on the State of the Finances, for the fiscal year ended June 30, 1968, transmitted, pursuant to law, from the Department of the Treasury; to the Committee on Finance.

PROPOSED LEGISLATION TO PROVIDE BETTER FACILITIES FOR THE ENFORCEMENT OF THE CUSTOMS AND IMMIGRATION LAWS

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to amend the act entitled "An act to provide better facilities for the enforcement of the customs and immigration laws" (with accompanying papers); to the Committee on Finance.

PROPOSED LEGISLATION TO PROVIDE BETTER FACILITIES FOR THE ENFORCEMENT OF THE CUSTOMS AND IMMIGRATION LAWS

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to amend the act entitled "An act to provide better facilities for the enforcement of the customs and immigration laws" (with accompanying papers); to the Committee on Finance.

PROPOSED LEGISLATION PROVIDING FOR APPOINTMENT OF CERTAIN PERSONS IN THE NURSING SERVICE IN THE DEPARTMENT OF MEDICINE AND SURGERY OF THE VETERANS' ADMINISTRATION

A letter from the Acting Administrator, Veterans' Administration, transmitting a draft of proposed legislation to amend title 38 of the United States Code to provide for appointment of certain persons in the nursing service in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes (with an accompanying paper); to the Committee on Labor and Public Welfare.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented and referred as indicated:

By the PRESIDING OFFICER:

A resolution adopted by the Young Democratic Club of Montgomery County, Ohio, remonstrating against the proposed antiballistics missile plan; to the Committee on Armed Services.

A resolution adopted by the Board of Supervisors of Steuben County, N.Y., remonstrating against the inclusion of municipal bonds within the present tax reform proposal; to the Committee on Finance.

A resolution adopted by the City Council of San Fernando, Calif., remonstrating against the enactment of revenue laws which would deprive State and local government obligations of their traditional immunity from Federal taxation; to the Committee on Finance.

A resolution adopted by the City Council, National City, Calif., praying for the enactment of legislation to halt current inflation-

ary trends in the United States; to the Committee on Finance.

A resolution adopted by joint meeting of the Western Slope District County Commissioners and San Luis Valley District County Commissioners Association, held at Montrose, Colo., praying for a complete examination relating to the funding and administration of welfare; to the Committee on Labor and Public Welfare.

REREFERRAL OF S. 2306

Mr. LONG. Mr. President, on June 5, a bill, S. 2306, was introduced by the Senator from Nebraska (Mr. HEUSKA) and referred to the Committee on Finance. The bill has to do with establishing quarantine stations for animals that come from countries with certain diseases. Because it deals with ports of entry, the bill was properly referred to the Committee on Finance. However, I understand that the Committee on Agriculture and Forestry is interested in looking into the bill as well as the Department of Agriculture. On behalf of the Senator from Nebraska (Mr. CURTIS), who is a member of the Finance and Agriculture Committees, I ask unanimous consent to rerefer S. 2306 to the Committee on Agriculture and Forestry.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. TYDINGS, from the Committee on the Judiciary, with amendments:

S. 980. A bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes (Rept. No. 91-268).

By Mr. YOUNG of North Dakota, from the Committee on Agriculture and Forestry, with amendments:

S. 1790. A bill to amend the Act of August 7, 1956 (70 Stat. 1115), as amended, providing for a Great Plains conservation program (Rept. No. 91-269).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with amendments:

S. 1076. A bill to establish in the Departments of the Interior and Agriculture Youth Conservation Corps, and for other purposes (Rept. No. 91-270).

By Mr. MOSS, from the Committee on Interior and Insular Affairs, without amendments:

S. 1613. A bill to designate the dam commonly referred to as the Glen Canyon Dam as the Dwight D. Eisenhower Dam (Rept. No. 91-273).

By Mr. LONG, from the Committee on Commerce, with an amendment:

H.R. 4153. An act to authorize appropriations for procurement of vessels and aircraft and construction of shore and offshore establishments for the Coast Guard (Rept. No. 91-271).

By Mr. LONG, from the Committee on Commerce, with amendments:

H.R. 4152. An act to authorize appropriations for certain maritime programs of the Department of Commerce (Rept. No. 91-272).

EXECUTIVE REPORT OF A COMMITTEE

As in executive session,

The following favorable report of a nomination was submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Robert B. Krupansky, of Ohio, to be U.S. attorney for the northern district of Ohio.

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. DIRKSEN:

S. 2468. A bill to amend certain provisions of the Internal Revenue Code of 1954 relating to beer, and for other purposes; to the Committee on Finance.

(The remarks of Mr. DIRKSEN when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. DIRKSEN (by request):

S. 2469. A bill for the relief of Guiseppa and Francesca Menolascina; to the Committee on the Judiciary.

By Mr. SCOTT (for himself, Mr. BIBLE, Mr. BROOKE, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. HARTKE, Mr. HATFIELD, Mr. HOLLINGS, Mr. INOUYE, Mr. KENNEDY, Mr. MAGNUSON, Mr. PROUTY, Mr. SPONG, and Mr. STEVENS):

S. 2470. A bill to amend the Food Stamp Act of 1964 to authorize elderly persons to exchange food stamps under certain circumstances for meals prepared and served by private nonprofit organizations, and for other purposes; to the Committee on Agriculture and Forestry.

(The remarks of Mr. SCOTT when he introduced the bill appear earlier in the RECORD under the appropriate heading.)

By Mr. YOUNG of Ohio:

S. 2471. A bill to abolish the Subversive Activities Control Board and to transfer the powers, duties, and functions thereof to the Department of Justice, and for other purposes; to the Committee on the Judiciary.

By Mr. RIBICOFF:

S. 2472. A bill to establish an Intergovernmental Commission on Long Island Sound; to the Committee on Government Operations.

(The remarks of Mr. RIBICOFF when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. TYDINGS:

S. 2473. A bill to improve judicial machinery by granting the district courts of the U.S. jurisdiction to resolve controversy with respect to jurisdiction to regulate a public utility and to provide for venue in such cases; to the Committee on the Judiciary.

(The remarks of Mr. TYDINGS when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. NELSON:

S. 2474. A bill for the relief of Esperanza del Iocorro Sandino; and

S. 2475. A bill for the relief of Dr. Marcial Zamaro, Jr.; to the Committee on the Judiciary.

By Mr. YARBOROUGH:

S. 2476. A bill to expedite delivery of special delivery mail, and for other purposes; to the Committee on Post Office and Civil Service.

(The remarks of Mr. YARBOROUGH when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. GOLDWATER:

S. 2477. A bill for the relief of Theodore P. Crowley; and

S. 2478. A bill for the relief of Consuela Hagler; to the Committee on the Judiciary.

By Mr. MUSKIE:

S. 2479. A bill to improve the financial management of Federal assistance programs; to facilitate the consolidation of such programs; to provide temporary authority to expedite the processing of project applications drawing upon more than one Federal assistance program; to strengthen further congressional review of Federal grants-in-aid; and to extend and amend the law relating to intergovernmental cooperation; to the Committee on Government Operations.

(The remarks of Mr. MUSKIE when he in-

troduced the bill appear later in the RECORD under the appropriate heading.)

S. 2468—INTRODUCTION OF A BILL TO AMEND CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954 RELATING TO BEER, AND FOR OTHER PURPOSES

Mr. DIRKSEN. Mr. President, I introduce a bill for appropriate reference. Along with it I submit a sectional analysis of the proposed legislation and ask that it be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the analysis will be printed in the RECORD.

The bill (S. 2468), to amend certain provisions of the Internal Revenue Code of 1954 relating to beer, and for other purposes, introduced by Mr. DIRKSEN, was received, read twice by its title, and referred to the Committee on Finance.

The material presented by Mr. DIRKSEN follows:

SECTIONAL ANALYSIS OF PROPOSED LEGISLATION "TO AMEND CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954 RELATING TO BEER, AND FOR OTHER PURPOSES"

Sec. 1. In the definition of the term "removed for consumption or sale" under the Code, would delete from the definition of the term "removals" the present exception for any beer returned to the brewery on the same day the beer is removed from the brewery.

Explanation: This change complements the change to 26 USC 5056(a) which is made in Sec. 3, below, which will authorize the brewer to make a compensating offset or deduction from the Federal beer tax for beer returned at any time to the brewer's plant from which originally removed. Retention of section 5056(a) exception would serve no purpose.

Sec. 2. Under present law, brewers are required to pay the tax on any beer shipped from the factory to commercial laboratories or otherwise for other than analysis of the beer itself. Thus, beer removed from the brewery for research in, or development or testing of, packaging materials and systems, and the like, is subject to the tax notwithstanding that it is never placed in market channels.

This section adds a new provision in 26 USC 5053 authorizing tax-free removals for such research, development, and testing, subject to such conditions and regulations as the Secretary or his delegate may prescribe. Consumer testing or other market analysis is specifically excluded from the R&D exemption.

Sec. 3. This section adds to 26 USC 5056 a new provision authorizing brewers to set off or deduct taxes previously paid or determined on beer that is returned at any time to the brewer's plant from which originally removed. As previously noted, this section and Sec. 1 above complement each other.

Explanation: Under present law and regulations, tax credit or relief on returned beer requires compliance with notice and claim procedures which, in the view of both the industry and the ATTD, are unnecessary, burdensome, and time-consuming from the standpoint of the brewer, and which make no contribution to the protection and collection of the Federal revenue. The procedural details of the new set-off authority will be prescribed by regulations which, among other things, will provide for the making and maintenance of adequate records by the brewer.

Sec. 4. This section adds a new provision to 26 USC 5056(b) extending to brewers the same privilege presently accorded to operators of distilled spirits plants for tax relief